

1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF FLORIDA  
 3 WEST PALM BEACH DIVISION  
 4 CASE NO. 16-CV-80655-ROSENBERG

5 **JAMES TRACY,** .

6 Plaintiff, .

7 vs. .

8 **FLORIDA ATLANTIC UNIVERSITY** . West Palm Beach, Florida  
**BOARD OF TRUSTEES,**

9 December 4, 2017

10 Defendant. .

11 VOLUME 4

12 JURY TRIAL PROCEEDINGS  
 13 BEFORE THE HONORABLE ROBIN L. ROSENBERG  
 14 UNITED STATES DISTRICT JUDGE

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1           *THE COURT:* Okay, good morning, everyone. I hope you  
2 had a good weekend. While we are getting set up, do we have  
3 counsel for all sides?

4           *MR. LEO:* Yes.

5           *THE COURT:* Let me acknowledge a couple of things.  
6 Are you all ready to listen?

7           So, as I understand it, we have less than an hour, as  
8 you anticipated on Friday, for redirect.

9           I know there were some filings over the weekend,  
10 Docket Entry 422 and 423, that relate to Exhibit 216-A, that  
11 relate in particular to the Court's ruling with respect to a  
12 portion of that email that dealt with the settlement  
13 discussions, and the Court precluded that portion of the email  
14 from coming in.

15           I am going to review the filings from both sides. You  
16 both had an opportunity to be heard. It is fair to say it  
17 shouldn't come in at this point. I know the Defense has an  
18 opportunity to call Dr. Tracy in your case in chief. If I  
19 change my ruling and am persuaded by your briefing, it would  
20 seem that would be the time to come in.

21           So, don't worry about that.

22           I will take a closer look at the issue now that it is  
23 briefed. I appreciate the brief and work over the weekend, I  
24 know that must have been difficult.

25           Secondly, there is a filing concerning Heather

1 Coltman, and I know you broke down each section of that  
2 exhibit, which number escapes me.

3 MR. BENZION: 2.

4 THE COURT: 2. I will take a closer look at that.  
5 Dr. Coltman is not coming on until after Dr. Alperin, correct?

6 MR. LEO: Yes.

7 THE COURT: I will postpone and review that carefully.  
8 If we need discussion, it may be I need a proffer, I want to  
9 make sure she is here early enough to have a proffer outside  
10 the jury's hearing.

11 MR. BENZION: We do intend to introduce those exhibits  
12 through Diane Alperin.

13 THE COURT: That is something that Heather Coltman  
14 wrote.

15 MR. BENZION: But Diane Alperin knows that.

16 THE COURT: Just because she knows it --

17 MR. BENZION: She can authenticate that Dean Coltman  
18 wrote it and lay a foundation for the rest of the statements.

19 THE COURT: I am not so sure, I have to hear a  
20 proffer. One proffer I have to hear is that each and every  
21 statement Coltman made was within the scope of her employment.

22 I have to hear from her that they're statements that  
23 she wrote in a proffer, and another layer, she is writing what  
24 other people are saying. I need to make sure what all the  
25 other people are saying were made within the scope of what they

1 were saying, and it's a whole category of unidentified people,  
2 which I think could be problematic.

3 As relates to Alperin, if you want to lay that  
4 foundation while she is on the stand without moving the exhibit  
5 in, that is fine, that would be without prejudice to try to  
6 move it in. It would seem to me that the proper person would  
7 be Coltman if you proffer the each and every statement -- maybe  
8 some things are within her scope, and some things are not, or  
9 maybe it all is within her scope, but then we have to address  
10 what each and every person with whom she is quoting -- and I  
11 don't know what she is writing about.

12 If she said something, you can ask her about that, but  
13 I don't know who -- I haven't looked closely enough to see who  
14 all the other people are. Maybe proffers are made with respect  
15 to all of those people, maybe you want them on call so that,  
16 through Coltman, you can get the document in. How many people  
17 --

18 *MR. BENZION:* The first page relates to statements  
19 that could have been made by other people, five or six people.  
20 The rest are Alperin, Coltman and Alperin, Coleman and Glick,  
21 the university's lawyer, two or three, and on the next page, a  
22 number of people.

23 *THE COURT:* The number of people might be problematic.

24 As to that document, without admitting the exhibit and  
25 reading from the exhibit, if you want to lay a foundation, it

1 would be appropriate for you to argue, and I will get that  
2 exhibit in front of me when you are questioning Alperin about  
3 that so I know whether you met -- and I will hear argument  
4 afterwards on the standard of this is within the scope of the  
5 employment under 801(d)(2)(D), getting it in.

6 *MR. BENZION:* Correct.

7 *THE COURT:* Are we ready to pull our jury in and have  
8 the redirect on the Tracy side?

9 *MR. LEO:* Yes. If I may get the exhibits.

10 *THE COURT:* They were organized on Friday. I was  
11 given my exhibit list back.

12 What does Defense want to say now that Tracy is on  
13 redirect?

14 *MR. CURLEY:* Over the weekend I went through my notes,  
15 I pulled the exhibits that were new scopes, and in fairness, we  
16 can designate that as direct. I talked to counsel and I don't  
17 know if he has any issues with that, it is okay either way. It  
18 is to my advantage if it is not. I know that is what you are  
19 looking for, truthfully, I didn't put the hand up.

20 *THE COURT:* What you are saying is that a few exhibits  
21 that came in in your cross were new exhibits so they could  
22 arguably be considered direct.

23 *MR. CURLEY:* That would be the fair interpretation.

24 *THE COURT:* What we can say for Plaintiff, you can  
25 consider this as redirect and your cross, because new exhibits

1 were admitted, so you can ask about them, and if something new  
2 comes up in the cross/redirect, then Defense let me know if you  
3 feel you should have a few more minutes with Dr. Tracy,  
4 although I think you all have had a lot of time with Dr. Tracy.  
5 If you need more time, that is fine.

6 *MR. CURLEY:* I will identify for the record the  
7 exhibits. Exhibit 1 -- these are Defendant's exhibits --  
8 Exhibit 3, Exhibit 21, Exhibit 22, Exhibit 45, Exhibit 111,  
9 Exhibit 114, 157, 165, 216-A, 216-I 217-M, 228, and 224.

10 *THE COURT:* Okay, so they are in evidence. They were  
11 not brought in on Plaintiff's case, so you consider that  
12 Defense's direct. Plaintiff should feel free to inquire about  
13 those areas as well.

14 *MR. CURLEY:* I think that is fair.

15 *THE COURT:* Okay.

16 *MS. GRIFFIN:* Do we anticipate we will have our  
17 mid-morning break before Dr. Alperin is on the stand?

18 *THE COURT:* We could.

19 *MS. GRIFFIN:* The point I want to make, we do have a  
20 standing objection to some of the exhibits that Plaintiff's  
21 counsel has introduced. I did want the Court to put on the  
22 record a standard objection to changes to the policy after Dr.  
23 Tracy's termination.

24 *THE COURT:* So, is it fair, that is acceptable,  
25 Defendant has a standing objection? If you want to articulate



1 the exhibits, why don't you state what they are.

2 MS. GRIFFIN: Exhibits 21, 22, 23 and 26 from  
3 Plaintiff's exhibit list.

4 THE COURT: Okay. All right.

5 MR. FEICHT: One last exhibit issue; at the end of the  
6 day Friday we compared our exhibit list and what was admitted,  
7 and we noted there are two discrepancies.

8 Based on the transcript, Defendant's Exhibit 26 and  
9 Defendant's Exhibit 165 were admitted into evidence and not  
10 reflected on the Court's list.

11 THE COURT: Do you both agree, start with 26, that 26  
12 was admitted without objection?

13 MR. LEO: We are talking about a defense exhibit?

14 MR. BENZION: It is indicated on the Plaintiff's  
15 exhibit list that 26 was admitted and it has not been yet, that  
16 is the discrepancy, it was on the wrong exhibit list.

17 MR. LEO: Defense Exhibit 26 is on, but not the  
18 Plaintiff's.

19 THE COURT: Maybe I made a mistake.  
20 Plaintiff's 26 is not in; is that correct?

21 MR. LEO: That is our understanding.

22 THE COURT: Is that Defendant's understanding?

23 MR. CURLEY: Yes.

24 THE COURT: I will cross that off Plaintiff's list,  
25 and on Defense's list, I will put it was admitted on 12/1/17.

1 I made that change.

2 What is the other thing that needs to be corrected?

3 MR. FEICHT: Defendant's Exhibit 165.

4 THE COURT: Hold on. 165, yes, was that admitted?

5 MR. FEICHT: Yes, I have the transcript, so Exhibit  
6 165, over objection, comes in.

7 THE COURT: That was 12/1/17?

8 MR. CURLEY: Yes, that was one of the ones I  
9 mentioned.

10 THE COURT: Does Plaintiff agree?

11 MR. LEO: Let me look.

12 THE COURT: You can look at the transcript and that  
13 would answer it.

14 MR. FEICHT: I have the transcript.

15 MR. LEO: Yes, your Honor.

16 THE COURT: You agree?

17 MR. LEO: That it was admitted, yes.

18 THE COURT: That was admitted 12/1/17. Thanks for  
19 checking that and I have to do a better job.

20 Okay, with that, Dr. Tracy can take the stand. You  
21 remain under oath, I will say that before the jury, and then  
22 Plaintiff can proceed with your redirect/cross.

23 *(Thereupon, the jury returns to the courtroom.)*

24 THE COURT: Welcome back, everyone, you may be seated.

25 Okay, welcome back, I hope everyone had a nice

1 weekend.

2 Dr. Tracy remains on the stand, he is still under  
3 oath. We are back to the Plaintiff's questioning of Dr. Tracy  
4 in what is considered redirect examination, but also  
5 cross-examination.

6 You may recall that Dr. Tracy is one of the witnesses  
7 whom the parties have agreed, in the interest of time, that he  
8 would be called only once, or if he needed to be called again,  
9 it would be for a limited purpose because the parties worked  
10 together to try to coordinate the questioning of any witness  
11 that both sides wanted to call, and Dr. Tracy happens to be one  
12 of those witnesses.

13 Dr. Tracy may be seated, and Plaintiff may resume with  
14 your questioning at this point.

15 MR. BENZION: Your Honor, may we ask that the monitors  
16 be put on? Thank you.

17 **REDIRECT EXAMINATION**

18 BY MR. LEO:

19 Q. Good morning, Dr. Tracy.

20 A. Good morning.

21 Q. When we finished Friday evening, Defense dropped four boxes  
22 in front of you. Do you remember that?

23 A. Yes.

24 Q. Have you had a chance to look at the boxes?

25 A. Yes.

1 Q. Were there blog posts in the boxes?

2 A. Yes.

3 Q. What else?

4 A. Blog posts with the comments from readers.

5 Q. If you had to estimate how much commentary there was  
6 printed in the boxes, how much would you say?

7 A. Probably 95 percent commentary.

8 Q. 95 percent?

9 A. Yes. Can I explain?

10 Q. Please.

11 A. Beginning late 2012, early 2013, the blog developed a  
12 fairly substantial readership and commentary. I set  
13 guidelines, no profanity, racism or bullying, so it fostered a  
14 community where you could get together and discuss whatever the  
15 topic of the article was.

16 So, most articles would generate probably at least 30  
17 comments. An earlier exhibit on Friday, the December 24, 2012  
18 article, generated over a thousand.

19 So, anywhere from a couple dozen, 30, 35 comments to  
20 several hundred, and these comments were moderated. There were  
21 key words that would trigger my review of the comment. If  
22 there was something that someone was troubled or weren't  
23 following the decorum of the blog, they were not allowed to  
24 comment.

25 It became self perpetuating in many ways, the comment

1 section itself, and once again, it was a community for people  
2 to get together. People became regulars, and there were  
3 frequenters of the chat room, if you will, there was a comment  
4 section on each article, and kind of developed relationships  
5 there on the site.

6 Q. With respect to the four boxes nicely laid out in front of  
7 you, when opposing counsel stated there were over 10,000 pages  
8 of writing, was that true or false, described as your writing?

9 A. False with respect to my writing.

10 Q. There wasn't over 10,000 pages of your writing in those  
11 boxes?

12 A. (Witness shakes head no.)

13 Q. There was a question whether your blog was a mystery. Was  
14 your blog a mystery to the university?

15 A. No.

16 Q. You said your blog was free online?

17 A. Yes.

18 Q. Freely available?

19 A. Yes.

20 Q. There was some talk about a donate button on the blog.

21 Dr. Tracy, a donation is not compensation, is it?

22 A. No.

23 Q. Compensation means to give money in return or in exchange  
24 for something, usually work; isn't that right?

25 A. Yes.

1 Q. And in 2015, what did compensation mean to you?

2 A. It typically meant a salary or the equivalent of 401.

3 Q. A quid pro quo?

4 A. Yes.

5 Q. In 2014, was your blog compensated or uncompensated?

6 A. Uncompensated.

7 Q. In 2013, was your blog compensated or uncompensated?

8 A. Uncompensated.

9 Q. In 2015, was your blog compensated or uncompensated?

10 A. Uncompensated.

11 Q. Where in the guidelines of the university policy does it  
12 define compensated activity?

13 A. It does not.

14 Q. It does not define compensated activity?

15 A. No.

16 Q. Where does it define uncompensated?

17 A. It does not.

18 Q. I believe you stated you did not pocket the money donated  
19 for the blog?

20 A. Yes.

21 Q. Could you describe the costs of maintaining the blog?

22 A. It would vary, but there is a small fee that one pays to  
23 Automatic, which is the parent company of wordpress.com, that I  
24 believe is \$50, and then there are some fees in addition to  
25 that, once again, on an annual basis to keep the blog up.

1           In addition, for the podcasts, there were a few pieces of  
2 equipment that were purchased in order to do the podcast.

3       Q. How about hosting, is that included in what you call the  
4 Word Press?

5       A. Yes.

6       Q. You testified that you had not been given clarification  
7 from your supervisors in 2015; is that correct, on the policy?

8       A. Yes.

9       Q. I noticed with respect to the communications that have been  
10 introduced into evidence, there are several messages that you  
11 sent to your supervisors at FAU in 2015; is that correct?

12      A. Yes.

13      Q. The November 22nd communication particularly, you sent that  
14 to your supervisor in response to the November 10th Notice of  
15 Discipline?

16           MR. CURLEY: Leading and compound.

17      BY MR. LEO:

18      Q. Is that correct?

19           THE COURT: Sustained. Rephrase.

20      BY MR. LEO:

21      Q. Why did you send the November 22nd letter to David  
22 Williams?

23      A. It was in response --

24      Q. I am sorry, to Heather Coltman.

25      A. That was in response to the November 10th Notice of

1 Discipline.

2 MR. LEO: Can you publish that, Exhibit 36, I believe?

3 THE COURT: Plaintiff's?

4 MR. LEO: Plaintiff's 36, your Honor, if we could put  
5 that on.

6 THE COURT: Okay. That is already in evidence.

7 BY MR. LEO:

8 Q. This is the letter you were referring to?

9 A. The first page, yes.

10 Q. Could you tell the jury why you sent this letter?

11 A. I sent it to Dean Coltman to explain my situation, my  
12 concerns, and to request more clarification once again on the  
13 policy that I was not receiving, and also to provide context  
14 for the situation.

15 Q. I notice there are a lot of attachments to this letter, it  
16 is quite extensive.

17 Why did you attach some documents to this letter?

18 A. I wanted to be able to --

19 MR. CURLEY: This is all cumulative, your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: I wanted to be able to point Dean  
22 Coltman to the documents if she might not have had them handy.

23 BY MR. LEO:

24 Q. I want to turn your attention to Exhibit B.

25 THE COURT: Which B?



1           MR. LEO: Of this composite.

2           THE COURT: You don't have anything marked as 36-B.

3           MR. LEO: I am referring to B in composite 36.

4           THE COURT: You mean an attachment?

5           MR. LEO: An attachment to this exhibit.

6           THE COURT: Attachment B within 36?

7           MR. LEO: Yes.

8           THE COURT: I caution redirect and cross, you know,  
9 stay away from cumulative evidence that the jury has already  
10 heard and that just goes to the areas that may be new areas  
11 that you want to address that came up on cross and direct.

12          MR. LEO: Yes, your Honor.

13          THE COURT: Okay.

14 BY MR. LEO:

15 Q. With respect to this letter, I don't believe this was read  
16 into the record, I want to the ask you what this letter is,  
17 your Honor -- I am sorry, Dr. Tracy, this letter dated November  
18 1st, what was that?

19 A. That was a letter that I sent to Dr. Williams, the chair  
20 person of SCMS, requesting further clarification and pointing  
21 out that there may have been some confusion in the outside  
22 activity policy that needed to be addressed.

23 Q. And this was sent before you were disciplined?

24 A. This was sent, I believe, nine days before I was  
25 disciplined, yes. November 1st, yes.

1 Q. And after this letter and before you were disciplined, did  
2 your supervisors talk to you about the policy at all?

3 A. No.

4 Q. Did you receive any form of clarification after November  
5 1st about the policy?

6 A. No.

7 Q. Going to Exhibit C, please. If you could follow with the  
8 monitor, Dr. Tracy. Attachment C.

9 This looks like a series of emails to your supervisor; is  
10 that correct?

11 A. Yes.

12 Q. Why did you attach these emails to your letter to Dean  
13 Coltman on November 22nd?

14 A. Well, I wanted to, I think, emphasize the fact that there  
15 was ongoing communication with the administration, with Dr.  
16 Williams concerning the situation.

17 Q. In looking in here, without looking at it, I didn't see any  
18 incident where you stated you were refusing to do anything.

19 Perhaps you could tell me, did you refuse to turn in your  
20 assignment?

21 A. No.

22 Q. Did you refuse to check a box?

23 A. No.

24 Q. You were asking for clarification from your supervisors in  
25 these emails; is that right?

1 A. Yes.

2 Q. And with respect to the emails that are attached here as  
3 Attachment C, did any of your superiors, including David  
4 Williams, Heather Coltman, did any of them respond to these  
5 communications from you with clarification about the policy?

6 A. No.

7 Q. Did any of them, referring to your supervisors, address the  
8 concerns you had about this policy?

9 A. At what time?

10 Q. After you sent these emails.

11 A. No.

12 Q. And when you sent these emails and you attached them to the  
13 November 22nd letter to Dean Coltman, that was to bring it to  
14 her attention what was going on prior to the discipline?

15 A. Yes, in case she didn't have the documentation handy, it  
16 might expedite the situation.

17 Q. After you sent the November 22nd email with all of these  
18 attachments, did Dean Coltman ever ask you anything about these  
19 emails?

20 A. In the attachments?

21 Q. That you sent to her, did she ever talk to you about them?

22 A. No.

23 Q. Did she ever answer any questions you had that were within  
24 these emails to the supervisors that you provided to her on  
25 November 22nd?

1 A. No.

2 MR. LEO: One second.

3 BY MR. LEO:

4 Q. Regarding this notion that the activities on Global  
5 Research -- I would like to ask you, can you tell us what  
6 Global Research is again, please?

7 MR. CURLEY: Cumulative, your Honor.

8 THE COURT: He has discussed that. If there is a  
9 particular question that came out on --

10 BY MR. LEO:

11 Q. Global Research was not your business?

12 MR. CURLEY: Objection, leading.

13 THE COURT: Sustained.

14 BY MR. LEO:

15 Q. With respect to Global Research, it has been alleged that  
16 you did not disclose Global Research with the university; is  
17 that correct?

18 A. Yes.

19 Q. If we could just turn to Attachment L, I would like to  
20 start with the -- I might be wrong about -- keep going?

21 MR. LEO: I'm sorry, your Honor. It is not L, I  
22 apologize, it is I. There are a lot of attachments here.  
23 Okay.

24 BY MR. LEO:

25 Q. Dr. Tracy, could you tell the jury what Attachment I is?

1 A. That is my faculty profile available on the page for my  
2 department on the FAU.edu website.

3 MR. LEO: Sorry, we haven't figured out how to rotate  
4 it yet.

5 BY MR. LEO:

6 Q. The bio, for the record, this states that you are a regular  
7 contributor to GlobalResearch.ca; is that correct?

8 MR. CURLEY: Objection, leading.

9 THE COURT: Sustained. No leading questions and just  
10 material that you have not gone into already.

11 MR. LEO: I was under the impression this is also  
12 cross. This did come up during opposing counsel's examination.

13 THE COURT: It is true, and it is cross, so I suppose  
14 there is a little more leeway there.

15 MR. LEO: We are trying to figure out how to get this  
16 back up there.

17 BY MR. LEO:

18 Q. Global Research, that is Global Research that was discussed  
19 on Friday?

20 A. Yes.

21 Q. Is Global Research the name of that organization?

22 A. No.

23 Q. What is the name of the organization?

24 A. The Center for Research on Globalization.

25 Q. Again, what is highlighted here for the jury, this was on

1 your faculty bio at the Defendant university?

2 A. Yes.

3 Q. On their website?

4 A. Yes.

5 Q. Did you post this bio on their website?

6 A. No.

7 Q. This is something the university posted?

8 A. An assistant for the department posted it on the website, I  
9 think they were working with Professor Joey Barkston, an  
10 associate professor with the department. He was helping to  
11 develop -- oversee development of the website or continuum.

12 Q. Let me turn back to the third page of Attachment L, if you  
13 could follow along with the monitor, Dr. Tracy.

14 Keep going. Maybe it is not L. The next page.

15 Dr. Tracy, what is in Attachment L, looking at it sideways?

16 A. This is a news story, if you will, or promotional  
17 announcement that appeared on my department's school multimedia  
18 studies website.

19 Q. This attachment is something posted on your college's  
20 website?

21 A. Yes.

22 Q. Did you post this on the college website?

23 A. No.

24 Q. If I could draw your attention to this here, the  
25 highlighted portion.

1 Dr. Tracy, did you write that, James Tracy story Looming  
2 Crisis on Globalization, July 7, '12, was voted number 14?

3 A. Yes.

4 Q. You wrote that?

5 A. I believe so, yes.

6 Q. Did you post that on the university website?

7 A. No.

8 Q. Do you know who posted that on the university website?

9 A. Again, I believe it was an assistant for the school that  
10 was working under the direction of Professor Joey Barkston.

11 Q. And is this a feature on the website?

12 A. Yes, if there is an accomplishment by a faculty member,  
13 then the school, college, they like to publicize those things.

14 Q. So, your activities on Global Research were featured by the  
15 university on the website, just to be clear?

16 A. Yes.

17 Q. Okay, you can take this off.

18 Going back to the union issues that were brought out on  
19 Friday, during opposing counsel's questioning, please remind  
20 the jury who Thomas Johnson was.

21 A. He was the attorney that the union hired for me, actually  
22 the parent organization of United Faculty of Florida, which is  
23 the Florida Educational Association.

24 Q. And Mr. Johnson, he was hired after you received a notice  
25 of proposed discipline of termination from the university?

1 A. Yes.

2 Q. How long did Mr. Johnson actually represent you?

3 A. About three weeks.

4 Q. Did you ever meet Mr. Johnson?

5 A. We spoke on the phone.

6 Q. You never met Mr. Johnson in person?

7 A. No.

8 Q. Did Mr. Johnson ever come to Boca Raton from his office in  
9 Tampa to do anything for you?

10 A. No.

11 Q. Do you know if Mr. Johnson requested your personnel file?

12 A. He did not.

13 Q. Do you know if Mr. Johnson had all of the evidence in this  
14 case?

15 A. He did not.

16 MR. CURLEY: Leading and hearsay.

17 THE COURT: Well, not leading, because it is also  
18 cross.

19 MR. CURLEY: Hearsay.

20 THE COURT: Okay. Overruled. The question was, do  
21 you know whether he requested the personnel file.

22 I will allow that question. The witness said he did  
23 not, so that is fine. I will overrule that objection.

24 MR. LEO: One moment, your Honor.

25 THE COURT: Yes.



1           MR. LEO: I would like to show the witness Plaintiff's  
2 Exhibit 2 only for identification.

3           THE COURT: Only for identification, all right. It is  
4 not in evidence, so he can't testify about it or read from it.  
5 If you just want to present it to him, make sure not to show it  
6 to the jury.

7 BY MR. LEO:

8 Q. Dr. Tracy, showing you what is marked Plaintiff's Exhibit  
9 2, do you recognize this?

10 A. Yes.

11 Q. Did Mr. Johnson have Plaintiff's Exhibit 2 when he  
12 represented you?

13           MR. CURLEY: Objection, your Honor, foundation,  
14 hearsay.

15 BY MR. LEO:

16 Q. If you know.

17           THE COURT: If the witness has direct knowledge of  
18 that, he may answer the question.

19           MR. CURLEY: Foundation, first, please, your Honor.

20           THE COURT: Yes, you can lay the foundation whether he  
21 knows or doesn't know.

22 BY MR. LEO:

23 Q. Dr. Tracy, what is Exhibit 2?

24           THE COURT: Hold on one second.

25 I'm sorry, state the question again.

1 BY MR. LEO:

2 Q. Dr. Tracy, what is Plaintiff's Exhibit 2, if you know?

3 MR. CURLEY: Foundation, your Honor, personal  
4 knowledge and hearsay. It might be a good idea to approach.

5 THE COURT: We talked about this exhibit.

6 Is this necessary to --

7 MR. LEO: We are laying a foundation, we are not  
8 intending to introduce it at this time.

9 THE COURT: What are you trying to lay a foundation  
10 for?

11 MR. LEO: Whether Mr. Johnson had this particularly.

12 THE COURT: The first question is, does the witness  
13 know if Mr. Johnson had this?

14 MR. LEO: Yes.

15 THE COURT: The witness can answer that question.

16 BY MR. LEO:

17 Q. Did Thomas Johnson have Exhibit 2.

18 MR. CURLEY: That was not the question.

19 THE COURT: That is the question I am allowing.

20 MR. CURLEY: He needs to establish he had knowledge of  
21 it, your Honor.

22 THE COURT: Yes. The question is, did the witness  
23 have knowledge whether Mr. Johnson had in his possession  
24 Exhibit 2.

25 The witness may answer yes or no.

1           *THE WITNESS:* I'm sorry, could you restate?

2           *BY MR. LEO:*

3           *Q.* The question is, do you have knowledge whether Mr. Johnson  
4           had Plaintiff's Exhibit 2 at the time of his representation of  
5           you?

6           *A.* He did not.

7           *Q.* How do you know that?

8           *MR. CURLEY:* Move to strike, your Honor. That is not  
9           responsive.

10          *THE COURT:* The question is -- because the answer is  
11          he did not, the question first is, Dr. Tracy, do you have  
12          knowledge whether Mr. Johnson had knowledge of this, yes or no?  
13          You have the knowledge?

14          *THE WITNESS:* I do.

15          *THE COURT:* You have the knowledge, yes. The question  
16          was, did he have it or not, and that is when you answered he  
17          did not.

18          *THE WITNESS:* During his representation of me, he did  
19          not.

20          *MR. CURLEY:* We need to approach.

21          (Proceedings at sidebar.)

22          *MR. FEICHT:* The witness' knowledge regarding whether  
23          or not it was within Mr. Johnson's possession is based on Mr.  
24          Johnson's testimony. We are getting close to him commenting on  
25          another witness' testimony, because Mr. Johnson's deposition

1 was taken for use at trial, it has not been laid as a  
2 foundation first.

3 If you dig any deeper, the witness will be forced to  
4 admit what he knows is based on testimony for trial that the  
5 jury has not heard yet.

6 *MR. CURLEY:* And where is that going?

7 *MR. FEICHT:* It's going into Mr. Johnson's legal  
8 opinion that he would like to have this particular document in  
9 his possession because, based on reading it without having any  
10 context about who said what, it is all statements made by FAU,  
11 it is not -- he thought that would show evidence of pretext.

12 We are getting into closeness to Mr. Johnson's opinion  
13 without the context that is supposed to be laid with this  
14 document. We are putting the cart before the horse in  
15 Plaintiff's Exhibit 2.

16 *THE COURT:* Were you going to end your questioning at  
17 this point?

18 *MR. BENZION:* Mr. Leo is not going to elicit testimony  
19 about Mr. Johnson's advice --

20 *THE COURT:* What other questions, if any, were you  
21 going to ask of Dr. Tracy?

22 *MR. LEO:* I wanted to know how and when he found  
23 Exhibit Number 2, whether Johnson had it.

24 *THE COURT:* You already asked whether Johnson had it.  
25 That has been asked and answered. What other questions?

1           MR. LEO: When he got Exhibit 2.

2           THE COURT: When who?

3           MR. LEO: Professor Tracy, and how he got it. It is  
4 through a public record request, which is laying a foundation  
5 to an exception to hearsay, your Honor.

6           THE COURT: You want to ask him did he ever get it,  
7 number one; and if so, when did he get it.

8           MR. LEO: And how.

9           THE COURT: And how did he get it?

10          MR. LEO: Yes.

11          THE COURT: Any objection only to those three  
12 questions?

13          MR. FEICHT: It is prejudicial how he got it, trying  
14 to imply that the Defense was hiding the documents. We need to  
15 have Dean Coltman testify to which portions they have a  
16 foundation to get around the hearsay objection.

17                They are getting into evidence of Plaintiff's Exhibit  
18 2 and the circumstances surrounding it without having context  
19 or foundation as to what it is, why it was produced, and  
20 statements in it.

21          MR. BENZION: We are not getting into the substance of  
22 the statements at all. As a matter of fact, he is going to  
23 testify -- when this document comes in later --

24          THE COURT: If it comes in.

25          MR. BENZION: If it comes in, yes, your Honor, he will

1 not have an opportunity to then testify about how he had gotten  
2 this, and he got it through a public records request. This is  
3 the time he can say I got the document through a public records  
4 request, and everyone will know he got it through a public  
5 records request, not getting into the substance at all.

6 This is a sensitive area, we will get --

7 *THE COURT:* I think the three questions are fine, did  
8 he get it, how did it get it, and when did he get it.

9 (Sidebar concluded.)

10 *BY MR. LEO:*

11 *Q.* Dr. Tracy, when did you obtain Plaintiff's Exhibit 2?

12 *A.* They were included in my personnel record.

13 *Q.* How did you obtain Plaintiff's Exhibit 2?

14 *A.* In my personnel record which I requested from FAU in early  
15 2016.

16 *Q.* You said early 2016. When did you request and obtain  
17 Plaintiff's Exhibit Number 2?

18 *A.* I believe it was in April of 2016, I made a public records  
19 request with Rachel or Rachelle Hollingsworth of FAU. She is  
20 in charge of fielding all public records requests from  
21 individuals or media, and it was produced to me shortly  
22 thereafter.

23 *MR. LEO:* One moment to confer, your Honor.

24 *THE COURT:* Yes.

1 BY MR. LEO:

2 Q. Dr. Tracy, did you conceal anything from the university?

3 A. No.

4 Q. Did you hide your blogging?

5 A. No.

6 Q. Your blogging was available online for all to see; is that  
7 correct?

8 A. Yes.

9 Q. I believe there was a settlement agreement you entered into  
10 with the Defendant university; is that correct?

11 A. A settlement?

12 Q. In 2013, there was a settlement agreement, I believe.

13 A. Yes.

14 Q. If you could pull that up for a second, Exhibit Number 7.  
15 Look at the monitor, Dr. Tracy.

16 A. Yes. This is the settlement agreement of September 26,  
17 2013.

18 Q. If I could direct your attention to number 3 where it says,  
19 "FAU will remove Notice of Discipline dated March 28, 2013,  
20 related to the past violation of Article 5.3 from the personnel  
21 file."

22 A. Yes.

23 Q. The Defendant did not remove the document from your file,  
24 correct?

25 MR. CURLEY: Objection, leading and personal

1 knowledge.

2 THE COURT: You can establish personal knowledge,  
3 foundation.

4 BY MR. LEO:

5 Q. Dr. Tracy, do you know if the Defendant university removed  
6 the Notice of Discipline of March 28, 2013 from your personnel  
7 file?

8 A. I know they did not.

9 Q. How do you know that?

10 A. Because it was included in the documents produced to me in  
11 my public records request, in the non-redacted portion of the  
12 file that was also produced to the news media.

13 MR. LEO: Nothing further, your Honor, at this time.

14 THE COURT: Okay, just a moment.

15 Okay, was there anything further from the Defense?

16 MR. CURLEY: Yes, your Honor.

17 THE COURT: This would be redirect.

18 MR. CURLEY: Correct. We are ready, okay, sorry. May  
19 it please the Court, your Honor.

20 THE COURT: Yes.

21 **RE CROSS-EXAMINATION**

22 BY MR. CURLEY:

23 Q. Exhibit 26 --

24 THE COURT: Defense exhibit?

25 MR. CURLEY: Yes.



1           *THE COURT:* Defendant's 8 is not in.

2           *MR. CURLEY:* 26 is not in?

3           *THE COURT:* There is 26. Is this an attachment?

4           *MR. CURLEY:* This is the exhibit we are going through.

5           *THE COURT:* Exhibit 26, if there is a reference to B,  
6 there is an Attachment B to 26.

7           *BY MR. CURLEY:*

8           *Q.* For clarity, the November 1st, 2015 letter that you were  
9 just talking about --

10           *MR. CURLEY:* May I approach?

11           *THE COURT:* Yes.

12           *BY MR. CURLEY:*

13           *Q.* Dr. Tracy, your counsel just asked you some questions and  
14 your suggestion was you were looking for clarity on why you  
15 didn't disclose the fact that you received some money, right?

16           *MR. LEO:* Objection, leading.

17           *THE WITNESS:* Not exactly.

18           *THE COURT:* Just a minute. When there is an  
19 objection, you need to let me rule on it.

20           Overruled.

21           *THE WITNESS:* I was looking for clarification on the  
22 policy and seeking to explain to Dean Coltman my situation and  
23 the situation concerning the outside activities policy. I did  
24 not want that in any way to conflict with the settlement  
25 agreement I had in 2013 as well.

1 BY MR. CURLEY:

2 Q. Sir, looking at the same letter, go to the next attachment,  
3 C, if you would. Okay.

4 You were looking for clarity, right?

5 A. Yes.

6 Q. How easy would it have been to say, hey, I'm getting some  
7 money for my blog research to support memoryhole, should I  
8 disclose that or not?

9 A. Once again, Mr. Curley, it did not occur to me. It was not  
10 a salary, it was not compensation for me. It was something  
11 that was kept in a separate fund to help maintain the blog.

12 Q. So, your testimony is the reason for all these emails and  
13 documents where -- in this one here he is saying, if you have  
14 outside income, then you have fill out the form.

15 You are saying to us you weren't at all worried about the  
16 money you were receiving through memoryhole, your questions all  
17 related to other stuff?

18 A. As I mentioned, I believe on the stand Friday, there was a  
19 news outlet that approached me and said it was going to pay for  
20 articles if I would submit them and that peaked my concern  
21 about reporting or not reporting them. That relationship did  
22 not materialize. If it did, and I was actually producing work  
23 for such an outlet and receiving compensation, then I would  
24 certainly have divulged that.

25 I think there is a big difference between having a fund to

1 help maintain the blog, buy necessary equipment and anything of  
2 the like, and being compensated forthrightly through a news  
3 organization to write material for that outlet.

4 Q. Would you put up Defendant's Exhibit 1, Article 19. Let's  
5 just use the monitor.

6 You see there in reportable outside activity, 19.2 -- work  
7 along with me for a minute. Reportable outside activity shall  
8 mean any compensated, uncompensated professional practice,  
9 consulting, teaching or research.

10 Weren't you taking in money for research? That is what it  
11 said on your blog, right?

12 A. No, I was not.

13 Q. Even though your donate button says memoryhole research?

14 A. I believe I explained a number of times this is for  
15 maintenance for the website. I did not go on any research  
16 trips or anything of the like as a result of or using those  
17 funds, which once again was not significant. The bulk of the  
18 funds went into a legal site fund.

19 Q. What does the site say? Does it say research?

20 A. I am sorry?

21 Q. What does it say, donate for memoryhole research?

22 MR. LEO: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: It says independent research fund.

25

1 BY MR. CURLEY:

2 Q. Exhibit 21, page two, please.

3 "Memoryhole research fund." Did I quote that correctly?

4 A. Yes, and click through and it says, memoryhole research  
5 fund, that is what I was thinking of. I was not attempting to  
6 be sarcastic.

7 Q. I understand. We need to be clear here, right?

8 A. Yes.

9 Q. You commented about the boxes that I put on the floor.

10 The comments was the part you take issue with. You read  
11 the comments, don't you?

12 A. Not all of them, probably a very small number of them.

13 Q. Really? Do you ever chime in on the comments?

14 A. Once in awhile I do, yes.

15 Q. And what I --

16 A. Frankly, I don't have the time to keep up with the comment  
17 activity on the blog. I attempt to assure that it's an  
18 environment welcome to everyone and there is no bullying in the  
19 comment section, no profanity, no racist remarks, sexist  
20 remarks, anything of the like in that regard. So --

21 Q. Okay.

22 A. In certain respects, it is unique, and that is why I call  
23 it a day-to-day community of readers and commentators.

24 Q. You talk about a civility code?

25 A. Yes.

1 Q. How can you monitor the civility unless you are reading  
2 comments?

3 A. Wordpress.com software provides for being able to put in  
4 particular words, particular terms, so any type of racial  
5 epithets, profanity, those comments came to me for review, and  
6 that was far and few between after, of course, a month or two.

7 MR. CURLEY: May I approach, your Honor?

8 THE COURT: Yes.

9 BY MR. CURLEY:

10 Q. Professor Tracy, I am handing you what we marked 231-A. Do  
11 you recognize that?

12 A. Yes.

13 Q. Could you identify that for the record, please?

14 A. An open letter to FAU administration by filmmaker Adnan  
15 Zuberi, A-D-N-A-N, Z-U-B-E-R-I.

16 MR. CURLEY: At this time I offer 231-A into evidence.

17 MR. LEO: Objection, hearsay as to -- with respect to  
18 the comments that Professor Tracy did not write himself. There  
19 is no objection to his own writing.

20 For the record, the post itself is only one page and a  
21 paragraph on the next page. The remainder of the 13-page  
22 document is comments on the post.

23 MR. CURLEY: Your Honor, if it would help, I would  
24 turn your attention to page seven of 13. The relevance would  
25 be obvious.

1           *THE COURT:* Okay. So, there is no objection to that  
2 which is written by Dr. Tracy in this exhibit, and there is an  
3 objection to that which is hearsay.

4           Is that the position of the Plaintiff?

5           *MR. LEO:* Yes.

6           *THE COURT:* What is the response from the Defendant on  
7 the statements not made by Dr. Tracy?

8           *MR. CURLEY:* Other than the statements made by Dr.  
9 Tracy, it is not being offered for its truth, your Honor, it is  
10 being offered as an example on the blog, the time spent on the  
11 blog and time spent in connection with the comments.

12           The commentary, we obviously do not believe is true,  
13 but we are offering it for -- just to show to the jury the time  
14 spent on the project such as this on memoryhole.

15           *THE COURT:* And the response by the Plaintiff, if the  
16 Court gives a limiting instruction that that which is not  
17 written by Dr. Tracy is not coming in for the truth of the  
18 matter?

19           *MR. LEO:* Your Honor, I believe it is going to be  
20 suggested for the truth of the matter, and with respect -- this  
21 is extensive, this is nearly ten pages of commentary from  
22 people, and there is no dispute that other people commented on  
23 the blog.

24           *THE COURT:* I will allow a redacted version of 231-A  
25 to come in, so I will allow that portion which Dr. Tracy wrote

1 to come in. The commentary will have to be redacted out,  
2 although counsel can ask Dr. Tracy, certainly, about the extent  
3 of any commentary in terms of time devoted and the number of  
4 commentaries, but that can be accomplished without letting the  
5 content of the commentaries that would otherwise be hearsay  
6 come in.

7 So 231-A in redacted form is admitted without  
8 objection. And counsel, you need to make sure you do the  
9 proper redactions.

10 *(Whereupon Defense Exhibit 231 was marked for evidence.)*

11 MR. CURLEY: Thank you, your Honor. May I proceed?

12 THE COURT: Yes.

13 BY MR. CURLEY:

14 Q. Dr. Tracy, memoryhole article in front of you is how many  
15 pages with the comments?

16 A. It is not exactly an article, it is a letter that this  
17 Canadian filmmaker sent to FAU administrators in support of me  
18 in February 2013.

19 Q. You posted it on your blog, right?

20 A. Yes.

21 Q. How many pages is it?

22 A. The document you handed me or the letter as it was posted?

23 Q. Let me help you.

24 A. Okay.

25 Q. I have 13 of 13. Does that sound right, 13 pages?

1 A. The post is less than a page. Overall, yes, it is --

2 Q. Okay, I want to be fair about this. You are saying the  
3 post is only a page and this much? (Indicating.)

4 A. The heading takes up about a third of the first page and  
5 there is a concluding paragraph that takes up about one-fifth,  
6 one-sixth of the page on page two.

7 So, it is probably more appropriate to count the length of  
8 the post by the number of paragraphs rather than the number of  
9 pages because it is ever oh so brief, it is four paragraphs.

10 Q. We agree it is four paragraphs. Now let's move on to the  
11 comments.

12 You comment -- go to page seven of 13.

13 A. Yes.

14 Q. And it has a gentleman by the name of James there. Is that  
15 you?

16 A. Yes.

17 Q. Okay. If you would, sir, could you read to the jury what  
18 you wrote?

19 A. Yes. "Thanks for the info, I will certainly consider it.  
20 At present, the course does not easily lend itself to this  
21 format because it is more of a participatory seminar discussion  
22 based around readings than the straight lecture, which is  
23 something I seldom do any longer."

24 Q. We need to go back, this is an important statement. Take  
25 your time on the last sentence.



1           MR. LEO: Objection, counsel is testifying.

2           THE COURT: Okay, sustained as to that. I remind  
3 everyone, counsel, when you read, including myself, you have a  
4 tendency to go faster. Go out of your way to what would seem  
5 reading very slowly, but is not slowly.

6           THE WITNESS: "Thanks for the info, I will certainly  
7 consider it. At present, the course does not easily lend  
8 itself to this format because it's more of a participatory  
9 seminar discussion based around readings than straight lecture  
10 which is something I seldom do any longer. A foremost reason I  
11 started this blog was to extend some of the exchanges into a  
12 broader public forum."

13 BY MR. CURLEY:

14 Q. You are talking about your classes and the blog, right?

15 A. This was three years ago. I believe that someone may have  
16 brought up the Culture of Conspiracy class.

17 Q. You are talking about how you extended in the public forum,  
18 right?

19 A. Into a pedestrian forum, a forum that is nonacademic, yes.

20 Q. You are taking your classroom and using the blog to extend  
21 it into the public, right?

22 A. No. I think that is a mischaracterization, you are reading  
23 more into this than there actually is.

24 Q. Okay. So, at least as to this blog that you posted, you  
25 were reading the comments, right?

1 A. On occasion I would look at the comments, but I would --  
2 some of the -- if I may elaborate. I don't know if it is  
3 permissible or not, but some posts had several hundred  
4 comments.

5 I wouldn't begin to venture into these, but people would in  
6 some cases write small essays, they would write 500, 600, 800  
7 word comments. These were highly literate people, professors,  
8 other professionals, they were quite educated, quite informed.  
9 Would I delve into the comment section in any length? No, I  
10 would not.

11 We had a free form Friday, where it would be just the  
12 comments carrying on the -- the commenters carrying on a  
13 conversation, some would go 500, 600, 800 separate comments,  
14 hence the perception that the memoryholeblog, my activity on it  
15 was that voluminous to fill all those boxes, when in fact that  
16 is an exaggeration.

17 Q. Okay. Isn't this the article that was part of the  
18 grievance in 2013 that the university took issue with, one of  
19 them?

20 MR. LEO: I object, outside the scope of  
21 cross-examination.

22 THE COURT: Overruled.

23 MR. LEO: Calls for speculation.

24 THE COURT: Overruled.

25 THE WITNESS: I believe so, yes.

1 BY MR. CURLEY:

2 Q. And you had agreed you wouldn't bring up FAU, and you would  
3 leave that out of your blog, right?

4 MR. LEO: Objection, mischaracterization.

5 THE COURT: Overruled.

6 THE WITNESS: This was prior to the settlement  
7 agreement.

8 BY MR. CURLEY:

9 Q. Right. And when you met with them in January and February,  
10 I thought you all walked away with some understanding that you  
11 weren't going to bring FAU into the blog.

12 MR. LEO: Objection, mischaracterization of the  
13 testimony and the record.

14 THE WITNESS: Are you talking about --

15 THE COURT: Wait, there is an objection. Overruled.

16 THE WITNESS: Are you talking about what took place at  
17 the meeting on January 18, 2013?

18 BY MR. CURLEY:

19 Q. Yes, and then you were back there was an exchange there,  
20 and I thought there was some -- did you not understand you  
21 weren't supposed to bring FAU into your blog?

22 A. I understood this was my constitutionally protected speech  
23 on my personal blog.

24 Q. So, because of your constitutional rights you thought you  
25 could bring FAU into it, you could represent FAU was involved,

1 you could represent that FAU is fully aware of all of these  
2 things and it is fine?

3 MR. LEO: Objection.

4 BY MR. CURLEY:

5 Q. Is that what you --

6 THE COURT: Can you restate the question? It was a  
7 compound objection.

8 BY MR. CURLEY:

9 Q. It limits, under the collective bargaining agreement, you  
10 from bringing FAU into your outside personal blog?

11 A. This was a letter sent to members of the administration,  
12 Dr. Coltman --

13 Q. Could you answer my question, please?

14 A. Could you restate it, please.

15 Q. Yes. Is it okay, in your opinion, for you to bring FAU  
16 into your personal blog and whatever you want to say about  
17 them, that is fine?

18 A. If it is a document that can be released by a public  
19 records request, and this is something that is being sent to  
20 the State of Florida officials, they may be deans or  
21 professors --

22 MR. CURLEY: Your Honor, could I ask the witness to be  
23 instructed to answer the question?

24 THE COURT: See if you can answer the question. If it  
25 requires an explanation, explain after you answer the question.

1 BY MR. CURLEY:

2 Q. Do you believe you are entitled to -- when you are working  
3 there, to bring FAU into your personal blog, say whatever you  
4 want about FAU?

5 MR. LEO: Objection, vague.

6 BY MR. CURLEY:

7 Q. That is okay.

8 THE COURT: Overruled.

9 THE WITNESS: That as well would be constitutionally  
10 protected.

11 BY MR. CURLEY:

12 Q. That is what you thought. When you signed the collective  
13 bargaining agreement, you agreed not to do any of those things,  
14 you did not do any of that, correct?

15 MR. LEO: Objection, mischaracterization of the  
16 agreement.

17 THE COURT: Overruled.

18 THE WITNESS: I had a disclaimer on the blog.

19 BY MR. CURLEY:

20 Q. When you agreed in the collective bargaining agreement, was  
21 that insincere, you didn't mean to keep that promise or not?

22 MR. LEO: Objection, mischaracterization of the  
23 agreement.

24 THE COURT: I will let the witness respond.

25 Overruled.

1           *THE WITNESS:* I don't know what article you are  
2 talking about. 5.3(d)?

3 *BY MR. CURLEY:*

4 Q. And 19. I think you know the articles, you seem to recite  
5 them really well in your letters.

6           *MR. LEO:* Objection, counsel is testifying.

7           *THE COURT:* Sustained.

8 *BY MR. CURLEY:*

9 Q. Five and 19, did you mean it or not?

10 A. 5.3(d), I had a disclaimer on the site that two civil  
11 rights organizations attested to a couple of months after  
12 this --

13           *MR. CURLEY:* Move to strike, nonresponsive.

14           *THE COURT:* Sustained, and I ask the jury to disregard  
15 the last statement by the witness.

16 *BY MR. CURLEY:*

17 Q. Do you want to answer the question, sir?

18 A. Can you restate it.

19           *MR. CURLEY:* I think the point is made.

20 *BY MR. CURLEY:*

21 Q. You told them that you wouldn't bring FAU into it and you  
22 didn't mention FAU. What you did was you posted all kinds of  
23 things, this being an open letter to the FAU administration,  
24 Dear Heather Coltman and Diane Alperin. That is what you did,  
25 right?

1 A. Again, they are State of Florida employees and officials.

2 Q. Did you do that?

3 A. On the blog, yes. I am not disputing the veracity of the  
4 document.

5 Q. And you signed -- Exhibit 19, please, Defendant's.

6 When you signed this settlement agreement, did you mean it?

7 A. When I signed the settlement agreement several months after  
8 this blog post?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. You meant this more than what you meant that was in  
12 the collective bargaining agreement or --

13 MR. LEO: Objection, vague.

14 THE COURT: Overruled.

15 THE WITNESS: You are talking about an agreement that  
16 was forged eight months after this was published on the blog.

17 BY MR. CURLEY:

18 Q. The collective bargaining agreement was in place before  
19 this, right?

20 A. Yes.

21 Q. And when you signed, you signed that in 2010, didn't you?

22 A. I believe so, yes.

23 Q. As president of the union?

24 A. That is correct. At that time, Article 19 was not used to  
25 discipline or terminate people for their speech.

1 Q. Maybe people weren't doing what you were doing.

2 MR. LEO: Objection, counsel is testifying.

3 THE COURT: Sustained. I ask counsel not to testify,  
4 just ask questions of the witness.

5 MR. LEO: Your Honor, if we could ask for an  
6 instruction to disregard counsel's statements.

7 THE COURT: As the Court said early on, any time  
8 counsel makes objections and any statements made by counsel,  
9 whether they be in the form of a question or opening statements  
10 or closing arguments, that is not considered evidence.

11 MR. CURLEY: One moment, your Honor.

12 THE COURT: Yes.

13 MR. CURLEY: One last thing.

14 May I approach, your Honor?

15 THE COURT: Yes.

16 MR. LEO: What exhibit is that?

17 MR. CURLEY: I am not getting into the substance of  
18 it.

19 BY MR. CURLEY:

20 Q. Professor Tracy, I hand you what looks like a blog.

21 MR. LEO: I would like to see a copy of what you  
22 showed the witness.

23 MR. CURLEY: Sure.

24 BY MR. CURLEY:

25 Q. I showed you the blog post. Sir, in the blog post, going



1 through the comments, you are commenting there again, right?

2 A. I don't have it in front of me, Mr. Curley.

3 MR. LEO: For the record, we don't have a number for  
4 the exhibit, I am not sure --

5 THE COURT: Is there an exhibit number for this?

6 MR. FEICHT: It's part of 224.

7 MR. CURLEY: I am not going to seek to admit it, your  
8 Honor.

9 BY MR. CURLEY:

10 Q. Professor Tracy, to be quick about this, do you see the  
11 comments there and your commenting?

12 A. On page three?

13 Q. Yes, there is a comment I think at 11:34, and then you  
14 respond at 11:40, right?

15 A. Yes.

16 Q. Six minutes later you are rifling off your comment, right?

17 A. Yes.

18 Q. Must have been following the blog that day or just a happy  
19 coincidence?

20 A. I don't know -- I don't recall. This was three years ago.  
21 Once in awhile when I would see a comment come in, or I saw  
22 something on a post, I made a remark.

23 This is a one-line remark.

24 Q. My point is, it suggests you are following the comments on  
25 the blog. Is that a fair statement?

1 A. That is your interpretation.

2 Q. All right.

3 MR. CURLEY: Nothing further, thank you.

4 THE COURT: Dr. Tracy should be able to step down, all  
5 complete from the Plaintiff?

6 MR. LEO: Yes.

7 THE COURT: All complete from the Defense at this  
8 point?

9 MR. CURLEY: Yes.

10 THE COURT: Dr. Tracy, you may step down.

11 We will take our mid-morning break. It is 10:25, so  
12 we will be in recess until 20 minutes to 11:00.

13 And with the same instructions, not to discuss the  
14 case, not to do any research about the case, not to have any  
15 contact with anyone associated with the case, and we will see  
16 you in 15 minutes.

17 *(Thereupon, a short recess was taken.)*

18 THE COURT: All right. Is the Plaintiff ready to call  
19 your next witness?

20 MR. LEO: We are, your Honor.

21 THE COURT: All right. We will bring our jury in.

22 Do you want me to read the instruction again about the  
23 next witness, the witness being called by both parties?

24 MS. GRIFFIN: Yes, your Honor.

25 THE COURT: Okay.

1           *(Thereupon, the jury returned to the courtroom).*

2           THE COURT: All right. You may be seated.

3           MR. BENZION: The Plaintiff calls Diane Alperin in her  
4 individual capacity and capacity of the Dean of Florida  
5 Atlantic University.

6           DIANE ALPERIN, PLAINTIFF'S WITNESS, SWORN

7           THE WITNESS: Diane, D-I-A-N-E, Alperin,  
8 A-L-P-E-R-I-N.

9           THE COURT: Ladies and gentlemen, the same instruction  
10 I want to read to you: Each party has a right to call  
11 witnesses to prove its case. The witness you are about to hear  
12 has been called by both parties. In the interest of time the  
13 parties have agreed to call this particular witness once,  
14 rather than calling them in one case and then in another case,  
15 Plaintiffs case and defense case.

16           If a witness is recalled a second time, it would be  
17 for a limited purpose, it wouldn't be to repeat what the  
18 witness said. There might be some limited issues that would  
19 necessitate the witnesses being called back a second time for a  
20 limited purpose.

21           You may hear the attorney say she is about to conduct  
22 direct or cross-examination. You can disregard those remarks  
23 as those are meant to aid the Court and counsel, and you should  
24 pay attention to what the witness has to say as you would for  
25 any other witness.

1 Any other instruction the Court needs to give with  
2 respect to this witness?

3 MS. GRIFFIN: No, your Honor.

4 THE COURT: Counsel may proceed.

5 **DIRECT EXAMINATION**

6 BY MR. BENZION:

7 Q. I would like to pick up where Mr. Curley left off. Can we  
8 publish Exhibit 7, please.

9 Dr. Alperin, you are very familiar this document, right?

10 A. Yes.

11 Q. Why don't we look at the bottom here; whose signature is  
12 that?

13 A. That is my signature.

14 Q. You signed this document?

15 A. Yes.

16 Q. Did you read it before you signed it?

17 A. Yes.

18 Q. When you signed it, did you mean you were going to do the  
19 things that you were required to do by this document?

20 A. Yes.

21 Q. Did you do what you were required to do?

22 A. Yes, I believe I did.

23 Q. This settlement agreement with Dr. Tracy requires Florida  
24 Atlantic University to remove the March 28, 2013 Notice of  
25 Discipline from his personnel file; is that true?

1 A. Yes, it is.

2 Q. You did not remove the March 28, 2013 Notice of Discipline  
3 from Dr. Tracy's personnel file, did you?

4 A. I believe I did.

5 Q. You believe you did?

6 A. I believe when we signed the settlement agreement -- I am  
7 sorry, it was four years ago.

8 I do have a clear picture in my mind that I went to the  
9 back of my file, to the -- I believe I did, one or the other,  
10 my secretary or me.

11 Q. I heard you say I believe. Do you know that you removed  
12 the Notice of Discipline from Dr. Tracy's file?

13 A. I am under oath, I am answering as truthfully as I can. I  
14 believe I did. I don't have a clear recollection four years  
15 ago of doing that.

16 Q. The answer is, you don't know?

17 A. I believe I did.

18 MR. BENZION: I am going to show the witness what has  
19 been marked as Plaintiff's 95-A. And specifically I am going  
20 to show the witness the last three pages of 95-A.

21 May I approach, your Honor?

22 THE COURT: Yes. That is not in evidence yet.

23 MR. BENZION: It is not, your Honor.

24 BY MR. BENZION:

25 Q. You recognize this document, don't you, Dr. Alperin?

1 A. Yes.

2 Q. This is Florida Atlantic University's response to the  
3 Plaintiff's second set of interrogatories; isn't that true?

4 A. It appears to be, yes.

5 Q. And these interrogatories, they were written questions  
6 directed to the university, correct?

7 A. Correct.

8 Q. And you answered these questions on behalf of the  
9 university; isn't that true?

10 A. Yes.

11 Q. When you answered them, you answered them under oath; isn't  
12 that true?

13 A. Correct.

14 Q. At this time I would like to move -- actually, let's turn  
15 to the first page of this document, please.

16 A. Okay.

17 Q. This is another notice of serving answers to Plaintiff's  
18 first set of interrogatories to Florida Atlantic Board of  
19 Trustees; isn't that true?

20 MR. CURLEY: Your Honor, before we go further, could  
21 we get a copy of these?

22 THE COURT: Yes.

23 MR. CURLEY: All set, your Honor, thank you.

24 BY MR. BENZION:

25 Q. You answered these interrogatories on behalf of the

1 university as well, didn't you, Dr. Alperin?

2 A. Correct.

3 MR. BENZION: At this time I would like to move 95-A  
4 into evidence.

5 THE COURT: Response.

6 MR. CURLEY: One moment, your Honor.

7 THE COURT: Okay.

8 MR. CURLEY: Is there a specific interrogatory we are  
9 looking at?

10 MR. BENZION: The last three pages.

11 MR. CURLEY: Your Honor, could we approach for a  
12 moment?

13 THE COURT: Is there a way you can frame your comment  
14 without stating anything that you would prefer the jury not to  
15 hear? Is there an issue in terms of admissibility?

16 These are interrogatory answers and Diane Alperin  
17 signed them. There is a interrogatory instruction that I can  
18 give the jury, so...

19 MR. CURLEY: Our issue is we were not aware we were  
20 going to use this, we haven't had a chance to look at it.

21 We prefer to get notice of the intent so we can be  
22 ready.

23 MR. BENZION: This has been raised since the first day  
24 of trial --

25 THE COURT: Just a moment. Why don't we -- is this

1     what you need to go into with the witness right now?

2             MR. BENZION: Yes.

3             THE COURT: Bring your set, if you would, and come  
4     briefly sidebar. I thought we were discussing all exhibits  
5     used by counsel before the witness. This was the idea.

6             (Proceeding at sidebar.)

7             THE COURT: What I looked at was the first and second  
8     set of interrogatories signed by Diane Alperin. What is the  
9     issue?

10            MR. CURLEY: The issue is lack of the Plaintiff's  
11     compliance with the Court order. We could stop wasting your  
12     time and the jury's time with stuff like that, that is the  
13     issue.

14            THE COURT: Response.

15            MR. BENZION: I can show you an email, I am fairly  
16     certain, I am not -- I'm 99 percent certain we advised the  
17     other side on the exhibit the first day of trial. It is an  
18     admission, that is why there is no objection to it. It is an  
19     interrogatory response, I don't know what the objection can be.  
20     They didn't make one other than we didn't know you were going  
21     to use our admissions against us.

22            THE COURT: Okay.

23            MR. CURLEY: Is that the email you are looking for?

24            MR. BENZION: No.

25            THE COURT: Here is the thing. It would appear to be



1 an admission by party opponent under 801(d)(2). It is not  
2 hearsay. Typically, interrogatories are not admitted as  
3 substantive evidence. The Court has an instruction under 2.6,  
4 and then you would be able to read --

5 MR. BENZION: That is what I want to do, publish.

6 THE COURT: You are not looking to get it into  
7 evidence, you want to be able to have the particular answer or  
8 answers to certain interrogatories published to the jury.

9 MR. BENZION: Correct.

10 THE COURT: Any objection to that?

11 MR. CURLEY: Which interrogatory?

12 MR. BENZION: Number 24, the last three pages, second  
13 set of interrogatories.

14 MS. GRIFFIN: Just an answer.

15 THE COURT: So, I will read the instruction first. I  
16 will not have it marked. I will give the instruction about the  
17 use of interrogatories under the pattern 2.6, and you can  
18 present the question and answer.

19 MR. BENZION: Yes, your Honor.

20 MS. GRIFFIN: Is that the only one?

21 MR. BENZION: Yes. At this time.

22 MR. CURLEY: Could we object? This hasn't been  
23 disclosed. Would that be a better way to handle this?

24 THE COURT: If you make an objection and you don't  
25 give me another reason, I assume that is what it is. I am

1 hoping we don't have any more of those, because they all should  
2 be disclosed.

3 You can say objection, same objection we discussed  
4 sidebar.

5 (Sidebar concluded.)

6 *THE COURT:* Okay, ladies and gentlemen -- first,  
7 counsel, the exhibit that was discussed is being marked, that  
8 is 94-A from the Plaintiff.

9 Ladies and gentlemen, you will hear the answers Diane  
10 Alperin gave in response to questions the other side submitted.  
11 The questions are called interrogatories. Before trial Diane  
12 Alperin gave the answers in writing while under oath. You must  
13 consider Diane Alperin's answers as though Diane Alperin gave  
14 the answers on the witness stand.

15 You may proceed.

16 *MR. BENZION:* With respect to publishing, may I  
17 publish visually and orally?

18 *THE COURT:* Yes. Which interrogatory?

19 *MR. BENZION:* 24, the last set, the third to the last  
20 page.

21 *THE COURT:* Interrogatory number 24. You will be  
22 publishing the interrogatory, which is the question, and the  
23 response; is that correct?

24 *MR. BENZION:* That is correct.

25 To clarify, I believe you said it is 94-A. It is

1 95-A.

2 THE COURT: I misspoke, 95-A, and it is being marked.

3 BY MR. BENZION:

4 Q. "Identify the persons who removed the March 28, 2013 Notice  
5 of Discipline from Plaintiff's personnel file, and set forth  
6 the date the Notice of Discipline was removed."

7 Response: "After a reasonable search, Defendant university  
8 was unable to determine the identity of the individual who  
9 physically removed the March 28, 2013 Notice of Discipline from  
10 Plaintiff's personnel file or the date it was removed."

11 Are you the person who performed this reasonable search?

12 A. The public records request -- I want to answer  
13 appropriately. The public records request is handled by public  
14 affairs, and --

15 Q. I asked about the reasonable search.

16 A. I'm sorry, you are right.

17 As I said, I believe that I took -- I removed it or my  
18 secretary removed it, but this answer is correct, that I cannot  
19 clearly recall what happened four years ago.

20 Q. If you thought that you or your secretary removed the  
21 Notice of Discipline, why didn't you put that in this answer  
22 here that you answered?

23 A. I don't know. I gave you the best answer I could.

24 Q. So, as you sit here today, you can't say who removed it or  
25 whenever it was removed, but you are certain it was removed?

1 A. I believe it was removed after September 2013, in response  
2 to the settlement agreement.

3 Q. Is there anyone at Florida Atlantic University who can  
4 confirm the Notice of Discipline was removed from Dr. Tracy's  
5 personnel file?

6 A. I can't answer that without getting into the number of  
7 files that faculty have.

8 Q. FAU only had one thing to do under this settlement  
9 agreement, correct?

10 A. Right.

11 Q. Was it too much to ask FAU to do it?

12 A. I believe we did it.

13 Q. Can you show me where in this settlement agreement it says  
14 Dr. Tracy can never mention FAU in his blog?

15 A. I believe it says he is not to use his work title, it says  
16 that he is supposed to publish a disclaimer.

17 Q. It does not say that he can never involve FAU in his  
18 writings or write about something that happens at FAU?

19 A. It also talks about Article 5.3(d).

20 Q. Can you answer my question, please. It does not say, this  
21 settlement agreement, that Dr. Tracy cannot mention FAU or  
22 involve FAU in his writings, does it?

23 A. It doesn't say it directly.

24 I think 5.3(d) talks about distancing one's self from what  
25 is your opinion and what is when you represent the university.

1 Q. Let's publish Exhibit 55, please, which is Article 5.3.

2 Let's look at 5.3, scroll please, (d).

3 This is what you are referring to, correct?

4 A. Yes.

5 Q. It says when you are speaking on a matter of public concern

6 --

7 A. Yes.

8 Q. -- you have to make sure that you say that the things that  
9 you are speaking about are your thoughts and comments and not  
10 that of the university?

11 A. Correct.

12 Q. This does not say you can never mention the university in  
13 your writings, does it?

14 A. No. Repeat the question. Did I answer it?

15 Q. Oh, you've answered it.

16 A. Okay.

17 Q. I think the point is made.

18 MS. GRIFFIN: Your Honor, I move to strike counsel's  
19 remarks.

20 THE COURT: Sustained. I ask the jury to disregard  
21 counsel's statement.

22 BY MR. BENZION:

23 Q. This says, when speaking on a matter of public interest a  
24 faculty member shall make clear when comments represent  
25 personal opinions and when they represent official university

1 positions.

2 You agree with me Dr. Tracy needed to have a disclaimer on  
3 his blog?

4 A. Correct.

5 Q. And that is because his blogging was a matter of public  
6 interest, right?

7 A. Correct.

8 Q. Please put 7 back up.

9 So, if there is no mention that Dr. Tracy can't talk about  
10 FAU in his writings in the settlement agreement and there is no  
11 mention that Dr. Tracy can't talk about FAU in Article 5.3,  
12 then that means he could talk about FAU in his writings, right?

13 A. I don't agree.

14 Q. So long as he had a disclaimer; is that true?

15 A. Correct.

16 Q. Dr. Tracy had a disclaimer on his blog at all times, didn't  
17 he?

18 A. I don't know. I haven't been reading his blog to know if  
19 he had a disclaimer on it at all times.

20 Q. In 2013, 14, 15, Dr. Tracy had a disclaimer on his blog,  
21 didn't he? Are you saying when Dr. Tracey was disciplined for  
22 not having a disclaimer on his blog, you didn't know whether he  
23 had a disclaimer on his blog at that time?

24 A. In 2013 -- you are saying all times, all times is 2012, 13,  
25 14, 15.

1 Q. And 2013 -- I apologize. In 2013, you are aware Dr. Tracy  
2 had a disclaimer on his blog?

3 A. At someplace on his blog, yes.

4 Q. Let's look at the settlement agreement. This does not say  
5 that Professor Tracy has to have the disclaimer that you wrote  
6 for him in a book that he contributes to, does it?

7 A. You are saying it has to do with his postings and  
8 communication, and a book is not a communication?

9 Q. Let's look at number one, for example: Grievant James  
10 Tracy agrees not to use his work title professor in any  
11 publications unless those statements pertain to the university  
12 or prior approval has been given. This includes all postings  
13 to his personal blogs, comments to his own or other blogs,  
14 Twitter feed or any social media or other media outlet  
15 regardless whether written or electronic.

16 The word "book" is not in paragraph one?

17 A. Correct. There was no book at this time.

18 Q. If you wanted him not to use it with a book, you could have  
19 put that?

20 A. If I knew about a book, I would have.

21 Q. You are lumping the blog, the Twitter feed and any other  
22 social media; isn't that true?

23 A. It appears to be, yes.

24 Q. Do you consider them at this time to be similar forms for  
25 expressing opinions?

1 A. Blogs and Twitter feeds, I believe so.

2 Q. Number two in the settlement agreement says: The Grievant  
3 will publish a disclaimer approved by the Vice Provost?

4 A. Correct.

5 Q. That was you at this time?

6 A. Correct.

7 Q. And you wrote a disclaimer for Professor Tracy to use in  
8 his public postings and blogs and other social media platforms,  
9 right?

10 A. Correct.

11 Q. All right. Let's back up, Dr. Alperin.

12 What is your current job at Florida Atlantic University?

13 A. Senior adviser of academic affairs.

14 Q. You are no longer the Vice Provost?

15 A. Correct.

16 Q. What do you do as senior adviser of academic affairs?

17 A. I have several projects, one has to do with continuing  
18 professional education, another has to do with the life long  
19 learning programs we have at the university. I consult with  
20 the Provost and Associate Provost, and I also have work to do  
21 with my college, the College for Design and Social Inquiry.

22 Q. How long have you been at Florida Atlantic University now?

23 A. 38 years.

24 Q. Are you the person with the most institutional knowledge  
25 about how things operate at FAU?



1 A. I don't know if I am the person with the most, no.

2 Q. FAU designated you as their corporate representative in  
3 this case?

4 A. Correct.

5 Q. That is because you have the most knowledge at least about  
6 all of the matters being discussed in this case as far as the  
7 university is concerned?

8 A. I believe I have a lot of knowledge.

9 Q. 2013, 14, 15, you were the Vice Provost at Florida Atlantic  
10 University; isn't that true?

11 A. I think at the beginning of that I was the Associate  
12 Provost and then I became Vice Provost.

13 Q. By the time you signed the settlement agreement on  
14 April 26, 2013, you were the Vice Provost, correct?

15 A. Yes, correct.

16 Q. What is the job responsibility of the Vice Provost at  
17 Florida Atlantic University?

18 A. The Vice Provost is second to the Provost, stands in for  
19 the Provost, and the biggest portfolio responsibility has to do  
20 with personnel.

21 Q. When you say stands in for the Provost and assists the  
22 Provost, I have to understand what the Provost does to  
23 understand what you are doing.

24 A. Okay.

25 Q. All right?

1 A. The Provost, vice-president for academic affairs is the  
2 title, is responsible for everything in the university that has  
3 to do with the academic side, personnel, programming, budget,  
4 offering courses, helping students.

5 It is one of the largest operations at the university.

6 Q. How many people are above the Vice Provost?

7 A. Above the Vice Provost, I report to the Provost and the  
8 Provost reports to the President.

9 Q. Two people are above you when you are Vice Provost?

10 A. Yes.

11 Q. Vice Provost is a special kind of Associate Provost, right?

12 A. I never heard it defined that way, no.

13 Q. All the other Associate Provosts answer to the Vice  
14 Provosts, right?

15 A. I think they consult, they have their own responsibilities.  
16 They don't necessarily answer to me, they answer to the  
17 Provost.

18 Q. Consult with the Vice Provost about what?

19 A. If they have a question about a program, about a personnel  
20 issue, about continuing education.

21 Q. So, just to make clear, we have the President, the Provost,  
22 the Vice Provost, and then there is a series of Associate  
23 Provosts?

24 A. Yes.

25 Q. All those Associate Provosts are in charge of their own

1 particular departments, right?

2 A. Correct.

3 Q. When you were an Associate Provost, you were Associate  
4 Provost of human resources or personnel relations?

5 A. I was there 38 years, one time I was Associate Provost of  
6 personnel, one time Associate Provost of personnel programs and  
7 another time I was Associate Provost at the Boca Raton campus.

8 Q. Now, below the Associate Provosts, you have deans of the  
9 colleges?

10 A. The deans report directly to the Provost. The Associate  
11 Provosts, depending on what they do, have people reporting to  
12 them.

13 Q. When you say the deans report to the Provosts, sometimes  
14 they just report to you and you pass the message along to the  
15 Provost, right?

16 A. They could ask me a question, I could go to the Provost for  
17 them, they could go to the Provost. They are evaluated by the  
18 Provost.

19 Q. Are you part of those evaluations?

20 A. No.

21 Q. And then below the deans, you have department supervisors  
22 or chairs?

23 A. Department chairs, school directors, associate deans,  
24 assistant deans and faculty and staff.

25 Q. All those people are below you, right?

1 A. They report to the dean.

2 Q. Reporting to the Provost or reporting to you, that is  
3 within the scope of any faculty member in employment, right?

4 A. I don't understand the question.

5 Q. They have a job to report to people, deans in the colleges,  
6 they have a job to report to their superiors?

7 A. Correct.

8 Q. About the functioning of their college, correct?

9 A. Correct.

10 Q. Faculty members' compliance or non-compliance with  
11 policies?

12 A. Correct.

13 *THE COURT:* Slow down.

14 *BY MR. BENZION:*

15 Q. The deans have to report about any sort of issue that is  
16 happening at their school that they need advice on?

17 A. Correct.

18 Q. How many deans are there at Florida Atlantic University?

19 A. Um-m-m, we have nine deans of colleges as well as a dean of  
20 graduate studies and dean of the graduate college and dean of  
21 undergraduate studies.

22 Q. Deans are the principal representative of the college to  
23 the community; isn't that true?

24 A. Correct.

25 Q. Who is Heather Coltman?

1 A. Heather Coltman was the Dean of the Dorothy F. Schmidt  
2 College.

3 Q. That was the college that Professor Tracey was a member of?

4 A. Correct.

5 Q. They deliver the academic programs of the college they are  
6 the dean of?

7 A. Correct.

8 Q. They are in charge of faculty development, correct?

9 A. One of their responsibilities.

10 Q. Deans like Heather Coltman serve as a liaison between the  
11 faculty and the office of the Provost, correct?

12 A. Correct.

13 Q. You are in the office of the Provost, correct?

14 A. Yes.

15 Q. Deans assure the quality of all academic programs in the  
16 college, right?

17 A. Working with others, yes.

18 Q. Okay. All deans are responsible for investigating whether  
19 policies are being complied with or not, right?

20 A. One of their responsibilities.

21 Q. All deans are responsible for enforcement of the policies  
22 of the university, right?

23 A. Yes.

24 Q. They are also responsible for enhancing the reputation of  
25 the college; isn't that true?

1 A. Yes.

2 Q. At a national and international level, right?

3 A. In some instances, yes.

4 Q. And they also serve as contributing members of the Provost  
5 leadership team; isn't that true?

6 A. Yes.

7 Q. All right. As Vice Provost, are you sometimes called upon  
8 to develop strategy for the university in responding to a  
9 crisis at the university?

10 A. Only as part of the group.

11 Q. Only as part of the group?

12 A. I wouldn't be developing strategy myself.

13 THE COURT: Let me pause for a moment. Does our juror  
14 want something to drink? Are you okay?

15 Okay, okay, I want to make sure you are all right.

16 BY MR. BENZION:

17 Q. Let's talk about Larry Glick. Do you know who he was?

18 A. He was senior counsel.

19 Q. His job was providing legal services to the university?

20 A. Yes.

21 Q. And he represented the university in grievances in  
22 litigation, correct?

23 A. In some instances, yes.

24 Q. He advised all university departments when he was general  
25 counsel at Florida Atlantic University, right?

1 A. In terms of labor issues.

2 Q. Just in terms of labor issues, is that what you are saying?

3 A. Yes. We had different attorneys who had different  
4 responsibilities for different areas.

5 Q. He assisted in the development of university regulations  
6 and policies; isn't that true?

7 A. That had to do with personnel, faculty.

8 Q. And he provided -- Larry Glick that is -- provided a source  
9 of legal information to the university to benefit the entire  
10 university community; is that true?

11 A. I hope so, yes.

12 Q. Let's talk about Lisa Metcalf for a moment.

13 A. Okay.

14 Q. Do you know who that is?

15 A. Yes.

16 Q. Lisa Metcalf was the chief press officer of the university?

17 A. Correct.

18 Q. Is she still that person?

19 A. She is still at the university, I don't recall what her  
20 current title is.

21 Q. Lisa Metcalf, when she was chief officer, was the primary  
22 contact for print and electronic media information about the  
23 university; isn't that true?

24 A. That is correct.

25 Q. And her duties include disseminating news features and

1 story ideas to the local media and national media, right?

2 A. I believe so.

3 Q. You don't have any reason to suggest that is not true?

4 A. No. I am not her supervisor, I don't know what her job  
5 description is, but it sounds accurate.

6 Q. Okay. She is responsible for -- when she was chief press  
7 officer, she was responsible for reviewing and coordinating all  
8 press releases and news related to internal and external  
9 audiences, right?

10 MS. GRIFFIN: Objection, your Honor, there is no  
11 foundation of her acknowledge.

12 THE COURT: Well, you can ask the witness first  
13 whether she is aware of a particular duty you are asking her  
14 about as relates to Lisa Metcalf.

15 MR. BENZION: May I approach, your Honor?

16 THE COURT: Yes.

17 BY MR. BENZION:

18 Q. Can you please take a moment to review that document.

19 So, Lisa Metcalf is responsible for advising FAU leadership  
20 on messaging to ensure FAU's institutional policies, positions  
21 and responses are accurately and effectively communicated  
22 through interviews, news releases and conferences; isn't that  
23 true?

24 MS. GRIFFIN: Objection, your Honor, foundation. Move  
25 to strike.



1 BY MR. BENZION:

2 Q. If you know.

3 THE COURT: I will have the witness answer if she  
4 knows. If so, you can answer the question.

5 THE WITNESS: It appears from this document that she  
6 does.

7 BY MR. BENZION:

8 Q. Let's talk about Scott Silversten for a moment.

9 THE COURT: You should have the document marked for  
10 identification. What was that?

11 MR. BENZION: It is not an exhibit, your Honor.

12 THE COURT: Well, there should be a record of what it  
13 is she was referring to.

14 Give it an exhibit number. You went up to 111-B.  
15 Shall we call it 112?

16 MR. BENZION: That is suitable for me, your Honor.

17 THE COURT: What is it?

18 MR. BENZION: Shall I tell you?

19 THE COURT: It is just for preservation purposes.

20 MR. BENZION: Media relations overview.

21 THE COURT: Document 112 for the Plaintiff, and it's  
22 just being marked for ID.

23 Okay, you may proceed.

24 BY MR. BENZION:

25 Q. You know who Scott Silversten is, right, Dr. Alperin?

1 A. Yes.

2 Q. Assistant vice president for communications and marketing  
3 at Florida Atlantic University, correct?

4 A. I believe that is his title.

5 Q. If he were assistant vice president for communications and  
6 marketing, obviously he is involved in communications at the  
7 university?

8 A. Yes.

9 Q. Developing those within the university and out of the  
10 university?

11 A. Yes.

12 Q. And marketing the university?

13 A. Yes.

14 Q. You understand what marketing is, right?

15 A. Yes.

16 Q. Okay. It sounds like he was involved in messaging. Would  
17 you agree with me?

18 A. Yes.

19 Q. And if there were ever some things that occur at the  
20 university which require the university to develop a media  
21 response, Mr. Silversten, as assistant vice-president in  
22 communications and marketing, that is something he would be  
23 involved in, right?

24 MS. GRIFFIN: Objection, foundation.

25

1 BY MR. BENZION:

2 Q. If you know.

3 THE COURT: The witness may answer if she knows.

4 A. He may be, yes.

5 BY MR. BENZION:

6 Q. Let's talk about Jim Acton. You know who Jim Acton is,  
7 correct?

8 A. I know who Jim Acton was.

9 Q. Is he no longer that person?

10 A. I don't know -- he used to be --

11 Q. Let me clarify, 2013.

12 A. He was -- I believe his title was director of human  
13 relations.

14 Q. How about human resources?

15 A. Human resources, thank you.

16 Q. That is a big job?

17 A. Yes.

18 Q. In charge of a lot of stuff, right?

19 A. Yes.

20 Q. Basically anything to do with any faculty member, correct?

21 A. All employees.

22 Q. Let's talk about former President of Florida Atlantic  
23 University, Mary J. Saunders. Do you remember that person?

24 A. Yes, I do.

25 Q. She was the president in 2013, when you were Vice Provost?

1           *MS. GRIFFIN:* I will reiterate to allow the witness to  
2 answer before the next question.

3           *THE COURT:* Take the question again slowly and have  
4 the witness answer.

5           *BY MR. BENZION:*

6           *Q.* When you were Associate Provost and Vice Provost in 2013,  
7 Dr. Mary J. Saunders was the president of Florida Atlantic  
8 University?

9           *A.* I was always Associate Provost while doctor Saunders was  
10 president. I became Vice Provost when Gary Perry became  
11 president.

12           *Q.* Are you saying when you signed the April 2013 settlement  
13 agreement as Vice Provost, Dr. Saunders was not the president  
14 any longer?

15           *MS. GRIFFIN:* Objection, that mischaracterizes the  
16 agreement.

17           *THE COURT:* I will let the witness answer. Overruled.

18           *THE WITNESS:* Correct. You are talking about Dr.  
19 Saunders?

20           *BY MR. BENZION:*

21           *Q.* Correct.

22           *A.* She was no longer president in September 2013.

23           *Q.* April 2013.

24           *MS. GRIFFIN:* Objection, best evidence is the  
25 document.

1           *THE COURT:* Maybe for ease -- if you are going to ask  
2 a question about a document, let's make sure the witness is  
3 able to see the document. Do you want to restate the question  
4 with the document?

5           *MR. BENZION:* That is okay, I will move on.

6           *BY MR. BENZION:*

7           *Q.* January 2013, right, Dr. Saunders was President at Florida  
8 Atlantic University?

9           *A.* Correct.

10          *Q.* And at that time you were --

11          *A.* Associate Provost.

12          *Q.* Thank you so much for clarifying that.

13          The President of Florida Atlantic University at this time  
14 was CEO at Florida Atlantic University, right?

15          *A.* I don't know that she carried that title, but she is in  
16 charge of the university.

17          *Q.* Pretty much in charge of everything?

18          *A.* Yes.

19          *Q.* When she issues a directive people have to follow it; isn't  
20 that true?

21          *A.* That is a challenging question. Yes, you expect that  
22 people will follow what the president asks you to do.

23          *Q.* Are you saying there are some directions that people don't  
24 have to follow?

25          *A.* I don't know. I don't know about all of the directions she

1 gives.

2 Q. Are there some directions that an administrator at FAU  
3 could give that a subordinate would not have to follow?

4 A. I -- I would not be part of that discussion. If they  
5 didn't want to do something, yes.

6 Q. And that discussion would not render them insubordinate?

7 A. Not necessarily so. This is out of context. You have to  
8 give me an example.

9 Q. We will get to that later.

10 A. Okay.

11 Q. The president, including Mary J. Saunders when she was  
12 president, is responsible for the entire operations of the  
13 university; isn't that true?

14 A. Correct.

15 Q. Dr. Alperin, I am going to direct your attention to late  
16 December 2012 -- or December 2012 and early 2013, okay?

17 A. Okay.

18 Q. All right. Now, you are aware that in December 2012 the  
19 Sandy Hook school shooting took place, right?

20 A. Correct.

21 Q. Shortly afterwards, you are aware the Plaintiff blogged  
22 about the incident, right?

23 A. Correct.

24 Q. At some point in early January 2013, you learned about  
25 Professor Tracy blogging about Sandy Hook?

1 A. Late December 2013.

2 Q. In January 2013, you knew about it, correct?

3 A. Correct.

4 Q. And shortly after Professor Tracy blogged about Sandy Hook,  
5 there was some press about the blogging, right, in the media?

6 A. Yes.

7 Q. In local and --

8 A. Yes, and international.

9 Q. And this wasn't positive media, right, coverage, correct?

10 A. I don't recall all of it, but a lot of it was not positive.

11 Q. And the university began receiving complaints at this time,  
12 right? In January 2013, correct?

13 A. Correct.

14 Q. The university received complaints from the community?

15 A. Correct.

16 Q. And they also received complaints from students?

17 A. Correct.

18 Q. They received complaints from other faculty members,  
19 correct?

20 A. Correct.

21 Q. And they received complaints from alumni?

22 A. Yes.

23 Q. Some of these people were urging the university to fire  
24 Professor Tracy; isn't that true?

25 A. Yes.

1 Q. And the university received complaints from some of their  
2 donors in 2013; isn't that true?

3 A. Correct.

4 MR. BENZION: I'm now going to show the witness what  
5 is previously marked 95-B, and we just talked about this with  
6 opposing counsel.

7 MS. GRIFFIN: No objection.

8 THE COURT: 95-B to be admitted or shown?

9 MR. BENZION: We are going to publish, interrogatory  
10 response.

11 THE COURT: All right. Marked 95-B?

12 MR. BENZION: It is 95-B.

13 THE COURT: Again, she gave answers to questions  
14 submitted by the other side, Diane Alperin gave the answers in  
15 writing while under oath. You must consider Diane Alperin's  
16 answers as if she gave the answers on the witness stand.

17 MR. BENZION: For the Court, page 15 of the pdf.

18 May I approach the witness?

19 THE COURT: Yes.

20 BY MR. BENZION:

21 Q. Dr. Alperin, the document I handed you, 95-B, contains your  
22 responses to the written questions, right?

23 A. Yes, that is what it says.

24 Q. You answered those questions under oath, right?

25 A. Yes.



1 Q. Under penalty of perjury, correct?

2 A. Yes.

3 MR. BENZION: I would like to publish --

4 THE COURT: Okay.

5 MR. BENZION: -- interrogatory 19 and the answer.

6 BY MR. BENZION:

7 Q. 19: "Describe when and how you first learned about  
8 Plaintiff's personal blogging, and set forth any and all  
9 actions undertaken in response to Plaintiff's blogging by you  
10 or on your behalf or on the Defendant university's behalf.  
11 Action is defined as the fact or process of doing something,  
12 typically to achieve an aim.

13 "Answer: Defendant Alperin first learned of Plaintiff's  
14 memoryhole blog in or around December 2012, after the shooting  
15 at Sandy Hook Elementary School. Defendant Alperin does not  
16 recall how the blog was first brought to her attention, but  
17 believes it was through a call or email. After learning of  
18 Plaintiff's memoryhole blog, Defendant Alperin met with  
19 Plaintiff on or about January 18, 2013 to discuss the  
20 Plaintiff's obligations under Article 5.3(d) of the collective  
21 bargaining agreement which required that when speaking on any  
22 matter of public interest, a faculty member shall make clear  
23 when comments represent personal opinions and when they  
24 represent official university positions.

25 "Plaintiff subsequently received a Notice of Discipline on

1 March 28, 2013 for his failure to comply with his obligations  
2 as discussed at the meeting on January 18. Plaintiff grieved  
3 this Notice of Discipline. At Step 2 in the grievance process,  
4 Defendant university and Plaintiff reached a settlement."

5 Dr. Alperin, my question is, this isn't everything that you  
6 did in response to Plaintiff's blogging in 2013, is it?

7 A. I am not sure I understand the question.

8 Q. Didn't you do something before the January 2013 meeting  
9 with the Plaintiff in response to the Plaintiff's blogging?

10 A. I am sure I did a lot of things. I am not trying -- not  
11 sure what the question is getting at.

12 Q. You mentioned a meeting in this answer?

13 A. Yes.

14 Q. One of the first things you did was you had a meeting on  
15 January 18th?

16 A. Correct.

17 Q. You didn't mention any other meetings in this  
18 interrogatory, did you?

19 A. No.

20 Q. Isn't it true you had meetings with the president before  
21 you met with the Plaintiff?

22 A. I don't recall meeting with the president. I do recall  
23 having a meeting to plan a meeting on January 18th.

24 Q. You actually had about four meetings before the  
25 January 18th meeting, didn't you?

1 A. Perhaps.

2 Q. You had one --

3 THE COURT: Wait, let the witness finish answering the  
4 question.

5 THE WITNESS: We did have meetings to plan for the  
6 meeting.

7 BY MR. BENZION:

8 Q. Those meetings you had before January 18th, they weren't  
9 just to plan for the January 18th meeting, were they?

10 A. I believe that's what they were about.

11 Q. Didn't you have meetings with chief press officers of the  
12 university to discuss the university's response to the media  
13 frenzy before the January 18th meeting?

14 A. They were part of the meetings, yes.

15 Q. And you had other meetings with Plaintiff's dean to discuss  
16 whether Plaintiff was not --

17 A. We had a meeting about what we were going to discuss with  
18 Dr. Tracy when we met with him.

19 Q. One of the things you were meeting about was whether or not  
20 you were going to discipline Professor Tracy, correct?

21 A. I think we were doing due diligence on what the issues were  
22 at that point.

23 Q. To be clear, in response to Plaintiff's blogging you had  
24 meetings to discuss whether or not you were going to discipline  
25 Plaintiff?

1 A. No, we discussed issues we were going to talk about at the  
2 meeting. We were not discussing discipline at this point.

3 Q. Prior to January 18, 2013?

4 A. Yes.

5 Q. Prior to January 18, 2013, weren't you discussing in  
6 meetings Plaintiff's First Amendment rights to be blogging?

7 A. I'm not sure that we discussed them. I think we were very  
8 clear that he had the right to his speech and that we were not  
9 going to and we never have stopped his blogging or his speech.

10 Q. And when you say we were very clear on those things, you  
11 were clear on them when you discussed them in meetings prior to  
12 January 18, 2013, right?

13 A. Yes.

14 Q. Okay. And prior to January 18, 2013, you had other  
15 meetings where you discussed whether Plaintiff was fulfilling  
16 his obligations under the collective bargaining agreement,  
17 right?

18 A. Perhaps. Again, you are talking about meetings four years  
19 ago.

20 Q. Are you saying that you don't remember what was discussed  
21 at these meetings?

22 A. I am saying I remember the general topics that we  
23 discussed.

24 Q. Okay. You agree with me there were four meetings prior to  
25 the January 18, 2013 meeting, right?

1 A. I think there were several. I would have to look at my  
2 calendar to see if there were four.

3 Q. Why didn't you mention those meetings in response to the  
4 interrogatory which asks you what you did in response to  
5 Plaintiff's blogging?

6 A. This is how I interpreted the question.

7 Q. Is the reason why you didn't include those meetings because  
8 you didn't know that the notes recorded at those meetings would  
9 surface?

10 A. I had no idea -- no. I wasn't trying to hide anything.

11 Q. There were notes taken at those meetings, right?

12 A. I didn't take any notes.

13 Q. Heather Coltman took them, right?

14 MS. GRIFFIN: Objection, foundation.

15 THE COURT: Sustained.

16 If the witness is able to answer the question whether  
17 she knows if anyone took notes, she can answer yes or no.

18 BY MR. BENZION:

19 Q. Heather Coltman took notes at the meeting that took place  
20 prior to January 18, 2013, right?

21 A. At the deposition you showed me notes and you told me they  
22 were Dean Coltman's notes of those meetings, correct.

23 Q. Is your answer that you don't know whether or not Dean  
24 Coltman took notes at meetings prior to the meeting on  
25 January 18, 2013?

1 A. I am telling you that you showed me notes and you told me  
2 they were Dean Coltman's notes. I didn't object to that.

3 Q. Do you have reason to believe those notes you were shown in  
4 your deposition and answered questions about are not Dean  
5 Coltman's notes?

6 A. No.

7 Q. As you sit here today as the corporate representative of  
8 Florida Atlantic University, are you saying you are not aware  
9 of anything that tells you that these notes are Dean Coltman's  
10 notes?

11 A. I believe --

12 MS. GRIFFIN: Objection, your Honor, regarding the  
13 scope of Dr. Alperin's testimony here today, there was a  
14 limited circumstance for which she was identified as the  
15 corporate representative. I want to make it clear as he refers  
16 to her as the corporate representative, that was a limited  
17 capacity.

18 THE COURT: Do you want to state what that capacity  
19 is?

20 MS. GRIFFIN: Corporate representative regarding the  
21 university's policy on outside activity, blogging and the  
22 discipline.

23 THE COURT: Does the Plaintiff agree?

24 MR. BENZION: Yes.

25 THE COURT: Can you state what those are?

1           *MS. GRIFFIN:* Conflict of interest, outside activities  
2 policy, the university's position on blogging and the  
3 Plaintiff's discipline and termination.

4           *THE COURT:* The questions when she is speaking in the  
5 capacity as a corporate representative, it means those  
6 statements are as if she was the Florida Atlantic University.  
7 On all other topics she is speaking in her individual capacity,  
8 that is, not on behalf of the university.

9           Counsel, make clear when you make reference to the  
10 witness speaking in her corporate capacity that it is done so  
11 in those areas where she is identified as the representative of  
12 the university.

13           *MR. BENZION:* Yes.

14           *BY MR. BENZION:*

15           *Q.* Let's get into the meetings you didn't answer in your  
16 interrogatory.

17           *MS. GRIFFIN:* Objection.

18           *THE COURT:* Sustained.

19           *BY MR. BENZION:*

20           *Q.* You were in a meeting on January 8, 2013 regarding the  
21 university's response to Dr. Tracy's blogging, correct?

22           *A.* I believe so. You are saying I was in a meeting on  
23 January 8th. I told you I was at meetings prior to  
24 January 18th.

25           *MR. BENZION:* I am going to show the witness what is

1 marked Plaintiff's 2 in a moment.

2 *BY MR. BENZION:*

3 Q. Are you saying you don't remember what days you attended  
4 meetings in January of 2013, prior to January 18, 2013?

5 A. The exact dates?

6 Q. Right. Right, you don't remember?

7 A. I don't remember. I don't have a calendar in front of me.  
8 I agreed to you I did have meetings before the 18th.

9 Q. If I were to show you something, that would refresh your  
10 recollection as to what dates you were in meetings in response  
11 to blogging, right?

12 A. If you would show me what? I don't think that was the end  
13 to the question.

14 *MR. BENZION:* I will show the witness Plaintiff's  
15 Exhibit 2.

16 *THE COURT:* Plaintiff's 2 is being marked, not  
17 admitted, but marked.

18 *BY MR. BENZION:*

19 Q. Please take a moment to review the documents I handed you  
20 so I can ask you questions about them.

21 A. Okay.

22 Q. So, you would agree with me you were in a meeting on  
23 January 8, 2013?

24 A. Oh, yes.

25 Q. And in that meeting, the university was planning part of



1 its response to Plaintiff's blogging, right?

2 A. Yes, with a number of issues, yes.

3 Q. And you also -- by the way, that January 8, 2013 meeting,  
4 it is not mentioned as something you did with respect to  
5 Plaintiff's blogging in this answer, right?

6 A. Correct.

7 Q. You were also in a meeting on January 9, 2013, right?

8 A. That is the next page, Dean Coltman's notes indicate that.

9 Q. You were in a meeting on January 9th, right?

10 A. It looks like that. I don't know. These are Dean  
11 Coltman's notes, I don't know if this is a meeting or she is  
12 making a note about a phone call.

13 Q. This document doesn't say anything about a phone call?

14 A. No, it just has my name and date.

15 Q. All right. You were at a meeting on January 14, 2013,  
16 correct?

17 A. Correct. It appears so.

18 Q. Okay. And in that meeting -- by the way, the January 9th  
19 meeting we just talked about in 2013, that is not something you  
20 mentioned as something you did in response to the Plaintiff's  
21 blogging in the answer to interrogatory here, right?

22 A. Correct.

23 Q. And that meeting you were in on January 14, 2013, that is  
24 also not a meeting that you disclosed in this answer as  
25 something you did in response to Plaintiff's blogging, right?

1 A. Correct.

2 Q. Those two meetings, January 9 and January 14, those are  
3 meetings you had to discuss the university's response to the  
4 Plaintiff's blogging, right?

5 A. The January 9th meeting, um-m-m, seems more to do with his  
6 assignment, doesn't seem to have anything to do with the  
7 blogging. The 14th is definitely a meeting about  
8 communications and planning for the January 18th meeting.

9 Q. So, all these meetings you had after the blogging  
10 controversy arose, right?

11 A. Correct.

12 Q. These are not meetings you would have like standard  
13 operating procedure to discuss Plaintiff's assignment, right?

14 A. Correct.

15 Q. Okay. So they were in response to the Plaintiff's  
16 blogging, right?

17 A. Responsive comments, yes.

18 Q. You attended a meeting on January 16, 2013, right?

19 A. Okay. It appears there was a meeting and I was on the  
20 phone.

21 Q. This is the only meeting that appears to have been on the  
22 phone in January 2013, prior to January 18, 2013?

23 A. No. They are Dean Coltman's notes, you have to ask her.

24 Q. Okay. You didn't mention the January 16, 2013 meeting in  
25 your answer to this interrogatory, did you?

1 A. Correct.

2 Q. Let's go back to the first page.

3 January 8, 2013 meeting, Larry Glick was in that meeting  
4 with you, right?

5 A. Correct.

6 Q. And Scott Silversten was in that meeting with you?

7 A. Yes.

8 Q. Jim Acton as well?

9 A. Yes.

10 Q. Diane Alperin was in that meeting?

11 A. Yes.

12 Q. And Lisa Metcalf was in that meeting, right?

13 A. Yes.

14 Q. Okay. They were in this meeting because it was their job  
15 to be in the meeting?

16 A. Correct.

17 Q. They wouldn't be there unless it was their job to be there?

18 A. Correct.

19 Q. All of this is these people's job to deal with matters like  
20 this, isn't it?

21 A. Yes.

22 Q. Let's go to January 9th. You said these are Dean Coltman's  
23 notes and you're named as being in that meeting, right?

24 A. Correct.

25 Q. It is you and Dean Coltman in the January 9th meeting,

1 right?

2 A. Appears to be.

3 Q. You were in this meeting because it was your job to have  
4 this meeting?

5 A. Yes.

6 Q. To have the discussion about the things discussed in this  
7 meeting, right?

8 A. Yes.

9 Q. And on January 14, 2013, when you met with Larry Glick --  
10 you met with him on that day?

11 A. That is what it says.

12 Q. You met on that day because this is a continuation of your  
13 duty to meet and discuss the university's response to  
14 Plaintiff's blogging, right?

15 A. Yes.

16 Q. You wouldn't be there if it wasn't your job to discuss the  
17 things that were discussed in this meeting?

18 A. Yes.

19 Q. Larry Glick, too?

20 A. Yes.

21 Q. Heather Coltman, too, right?

22 A. Yes.

23 Q. Okay. On January 16, 2013, this is a meeting that you --  
24 these notes are notes taken by Dean Heather Coltman, right?

25 Right?

1 A. Yes.

2 Q. About a phone call that you and Larry were having, right?

3 A. That is not how I interpret it.

4 Q. Oh, what does it mean to you?

5 A. She was probably meeting with me and Larry was on the  
6 phone.

7 Q. And you met that day to discuss these issues that are  
8 reported in these notes because that was your job to do that,  
9 right?

10 A. Right.

11 Q. You wouldn't be having meetings and discussing the things  
12 recorded in these notes if that weren't your job, right?

13 A. Correct.

14 Q. When you do things at the university, it is your job to do  
15 them, right?

16 A. Correct.

17 Q. Let's look at the notes of January 18, 2013. You were in a  
18 meeting on January 18, 2013?

19 A. Correct.

20 Q. That is the only meeting that you recorded in your answer  
21 to this interrogatory, right?

22 A. Yes.

23 Q. That is the meeting you had with Heather Coltman, Doug  
24 Broadfield and Dr. Tracy?

25 A. Correct.

1 Q. And you all discussed a number of matters in that meeting  
2 that are all within the scope of your employment?

3 A. Yes.

4 Q. Heather Coltman's employment?

5 A. Yes.

6 Q. Doug Broadfield's employment, right?

7 A. Doug Broadfield is there as a contract enforcement officer  
8 for the United Faculty of Florida.

9 Q. Okay.

10 MR. BENZION: Your Honor, at this time I seek to move  
11 Plaintiff's Exhibit 2 into evidence.

12 THE COURT: Response.

13 MS. GRIFFIN: We object, your Honor.

14 THE COURT: We will take it up outside the jury's  
15 hearing, but I haven't precluded you from asking anything about  
16 the -- of the witness. I want to take up admissibility of the  
17 document or lack thereof outside the jury's hearing.

18 Any followup questions you have of the witness  
19 relating to anything relating to the document or the meetings,  
20 you may ask.

21 MR. BENZION: If the meetings come into evidence I  
22 intend to discuss -- if the notes come into evidence, I  
23 definitely intend to discuss particular notes as reflected in  
24 the --

25 THE COURT: If you have questions about what happened

1 at the meeting or meetings of this witness who says she  
2 attended in her scope, ask her the questions. That is separate  
3 and apart from the document.

4 I would like to complete this area before we break for  
5 lunch. I haven't excluded subject matter, just the document  
6 itself.

7 *BY MR. BENZION:*

8 Q. Let's talk about the January 8, 2013 meeting, Dr. Alperin.

9 A. Yes.

10 Q. In this meeting, someone discussed what Dr. Saunders had  
11 said in the email about the issues discussed in this meeting;  
12 isn't that true?

13 A. That is what the first line says.

14 *MS. GRIFFIN:* We object if he goes line by line of a  
15 document not in evidence.

16 *THE COURT:* Direct your questions to this witness'  
17 participation, anything about this witness at the meeting. She  
18 should -- she is not the note taker and being asked to comment  
19 on a document she didn't produce, didn't write, you will have  
20 another witness coming in for that. Any questions about the  
21 meeting, or meetings, you can ask her.

22 *MR. BENZION:* My question did not refer to the  
23 document. I said at this meeting someone discussed, and I made  
24 a statement, I didn't reference the document. The witness  
25 seems to be referring to them. I asked what was discussed at

1 the meeting.

2 MS. GRIFFIN: He is doing it without lack of  
3 foundation, asking her to speculate and referring to a document  
4 not in evidence.

5 THE COURT: See if you can lay the proper foundation.  
6 If you are having trouble we may break for lunch.

7 BY MR. BENZION:

8 Q. You testified you were at the January 8, 2013 meeting,  
9 right?

10 A. Yes.

11 Q. You didn't indicate you missed any portions of the meeting,  
12 right?

13 A. You didn't ask me if I missed any portions. I don't think  
14 I did.

15 Q. You heard everything that was said in the meeting?

16 A. I believe so.

17 Q. You understand what was discussed at the meeting, right?

18 A. I think so.

19 Q. So, at that meeting there was a discussion about not  
20 emailing on these topics, right?

21 A. At the time, the public and the faculty and the staff were  
22 emailing a lot of people on campus and there was a discussion  
23 about not responding to emails and keeping all the  
24 communications central and sending everything to Lisa Metcalf  
25 and that that office would handle all responses.



1           So, my recollection is that was part of the discussion.

2           Q. So, the discussion about not emailing on the topic, it was  
3           about centrally handling communication; that is your testimony?

4           A. That is my testimony, yes.

5           Q. In this meeting on January 8, 2013, there was discussion  
6           about whether or not the Plaintiff had conspiracy theories when  
7           he was hired; isn't that true?

8                     MS. GRIFFIN: Objection, your Honor, foundation.

9           BY MR. BENZION:

10          Q. If you know?

11          A. I don't recall.

12          Q. You don't recall?

13                     THE COURT: You know, we will take our lunch break  
14          now.

15                     Ladies and gentlemen, we will be in our lunch break.  
16          The witness remains under oath. Do not discuss your testimony  
17          with anyone during the lunch hour. We'll return at 1:15 so we  
18          can take up these matters.

19                     I will remind our jurors not to discuss anything about  
20          the case, not to do any research about the case and not to have  
21          any contact with anyone associated with the case.

22                     Have a nice lunch. We will see you back at 1:15.

23                     *(Thereupon, the jury leaves the courtroom.)*

24                     THE COURT: Okay, be seated. Our witness may step  
25          down during this period if you would like to.

1 All right. So, let's take up a couple of matters and  
2 we will let you break for lunch.

3 Before we started today there were a couple of issues  
4 brought to the Court's attention. The first one is unrelated  
5 to what we are talking about now, and I will get that behind us  
6 right now, and that had to do with the filings at Docket Entry  
7 422 and 423.

8 So, the Court has reviewed Defendant's trial brief at  
9 Docket Entry 422, and the Plaintiff's response at Docket Entry  
10 423 on the Court's prior decision to exclude evidence of  
11 settlement offers or offers of compromise, in particular, the  
12 Court's decision and the briefing relating to Defendant's  
13 Exhibit 216-A, and the following excerpt from an email  
14 exchange.

15 It is undisputed that this part of the exhibit was  
16 written by Defendant Tracy. The excerpt at issue reads as  
17 follows, and it was Bate stamp 69: "The prospect of settling  
18 for my salary through spring is not attractive. Although I am  
19 sure they want this behind them before the term begins, I  
20 imagine I would have to sign a release that I cannot discuss  
21 the issue."

22 The Defendant argues that the Court should admit this  
23 excerpt on the grounds that the Plaintiff intended to write a  
24 book and this shows the Plaintiff had a motive for his actions  
25 in this case.

1           The Court concludes there are two ways to view this  
2 phrase. The first is that the Plaintiff was making an oblique  
3 reference to his ulterior motive to write a book about FAU and  
4 FAU's actions undertaken as a result of his protected speech.

5           The second is, however, that Plaintiff was making an  
6 observation on the ramifications of a particular offer of  
7 compromise. The Court exercises its discretion to give the  
8 Plaintiff the benefit of the doubt, and to protect  
9 communications that appear, based on Plaintiff's proffer on  
10 December 1, 2014, to be connected to an offer of settlement  
11 from the Defendant. So, the Court's prior ruling on Exhibit 2  
12 stands.

13           That is it on that issue.

14           With respect to Exhibit 2, upon review of the briefing  
15 on Plaintiff's Exhibit 2 by the Plaintiff, Docket Entry 420,  
16 the Court rejects the argument that the document may be  
17 admitted through a present sense impression or a public record.  
18 However, as to Rule 801(d)(2)(A) and 801(d)(2)(D) exception,  
19 the Court believes that the proffer on Exhibit 2 is strong.

20           The Court wants to ascertain two things. First,  
21 whether Plaintiff will put on the record right now that the  
22 proffer contained at Docket Entry 420 is accurate as to what  
23 the witnesses will testify to in court. Do you certify that?

24           MR. BENZION: I certify that, yes, your Honor, I --

25           THE COURT: Just yes or no.

1           MR. BENZION: Yes.

2           THE COURT: And second, Diane Alperin, the process now  
3 completed in terms of through her testimony acknowledging that  
4 the persons who attended the meetings were attending in their  
5 positions at that time and within the scope of her job duties  
6 at FAU, the Court would want to know what portions of the  
7 proffer that Plaintiff has put forth that Defendant disputes.

8           You can have a copy of now Docket Entry 420 in front  
9 of you that references Exhibit 2 and tell me exactly what it is  
10 that you say doesn't come in under 801(d)(2)(A) or (d)(2)(D) in  
11 light of the proffers and certification of the proffers and the  
12 beginnings of what Diane Alperin has begun to testify to.

13           That doesn't suggest that Diane Alperin will be the  
14 one who will be able to testify about the document, I am  
15 talking about admissibility of the document as 801(d)(2)(A) and  
16 801(d)(2)(D).

17           MS. GRIFFIN: Your Honor, our concern is with the  
18 catchall Dean Coltman's remaining recorded statements that are  
19 not laid out in full.

20           There are portions of the notes where Dr. Coltman  
21 testified during her depositions these are indications that  
22 things are being reported by the individuals present, and not  
23 laid out the foundation that the administrators would meet the  
24 hearsay within hearsay exception, your Honor.

25           In particular, I direct the Court to the bottom of

1 page three, impact --

2 THE COURT: Are we talking about Exhibit 2 or Docket  
3 Entry 420?

4 MS. GRIFFIN: Exhibit 2. They have not addressed the  
5 section three, the section entitled Impact, and at the bottom  
6 of page six there is a star, fac. cancel UFF, tell me how they  
7 have been affected, fear.

8 THE COURT: Are there page numbers on docket -- on  
9 Exhibit 2 or are you counting -- the bottom of page six that  
10 says what?

11 MS. GRIFFIN: There is a star, fac. cancel UFF. There  
12 was testimony by Dean Coltman during her deposition these are  
13 some of the things being reported to the administrators,  
14 particularly the statements that are on the bottom of page  
15 three with impact, we have 403 concerns about the statements  
16 such as black I on all faculty labeled one man argument against  
17 tenure. Those are things Dean Coltman said were being  
18 reported, without knowing the -- that is hearsay within  
19 hearsay.

20 THE COURT: The concerns are to the page of Exhibit  
21 2 -- the third page doesn't have a page number, but it says,  
22 "Impact: Hundreds emails calling for termination and appalled  
23 at admin., students current leaving his class, admissions  
24 withdrawing applications, disruption to offices, donors,  
25 history, etc. Show Braman email, other faculty have freedom of

1 speech, acad. freedom. Shows reckless and irresponsible -  
2 black eye on all faculty, labeled 1 man argument against  
3 tenure, will be poster child quit UFF membership."

4 That part you object to.

5 *MS. GRIFFIN:* Yes.

6 *THE COURT:* Under 403, whatever probative value is  
7 outweighed by the prejudicial effect, number one. And number  
8 two, this isn't necessarily a recording of Heather Coltman,  
9 it's of what someone else who may have been in his or her scope  
10 of capacity -- his or her employment making -- these are coming  
11 from third parties unidentified and therefore that is hearsay,  
12 and that is your basis.

13 *MR. CURLEY:* In addition, your Honor --

14 *THE COURT:* Is that correct?

15 *MS. GRIFFIN:* Yes, your Honor.

16 *THE COURT:* And then there is a third?

17 *MR. CURLEY:* There is a third, they are taking this  
18 out of sequence. They are doing this to confuse the jury and  
19 cause prejudice. If these documents come in through Heather  
20 Coltman, she is the note taker, she can explain her notes and  
21 put this into context. The fact that they change the sequence  
22 of the witnesses and want to direct this to Diane Alperin, who  
23 is not the note taker, is not an accident and done  
24 intentionally to mislead the jury, to cause undue and unfair  
25 prejudice, and we do object to that.

1           *THE COURT:* Let me keep going. Then go to the sixth  
2 page, at the bottom of the sixth page it says, "Fac, period,  
3 hyphen, cancel UFF, tell me how they have been effected, fear."  
4 And Defense's position on that.

5           *MS. GRIFFIN:* The same, hearsay within hearsay. Dr.  
6 Coltman testified this is something being reported to the  
7 administrators. There has not been any showing for exception  
8 to the hearsay, to hearsay within hearsay.

9           *THE COURT:* The Plaintiff's response on those two  
10 sections. Take the first one, impact.

11           *MR. BENZION:* Can I respond to the general comment  
12 that Mr. Curley made?

13           *THE COURT:* Let's go in order.

14           *MR. BENZION:* No problem.

15           *THE COURT:* Impact.

16           *MR. BENZION:* Our argument here is these are  
17 admissions.

18           *THE COURT:* Okay, how are they admissions, who made  
19 the statements?

20           *MR. BENZION:* There is nothing here that says these  
21 statements were made by others. They are recording the fact  
22 that emails were made, recording the fact that students are  
23 leaving his class. These are facts being transmitted to the  
24 note taker or being written down by the note taker.

25           *THE COURT:* Okay, stop there, that will not come in.

1 Now, you will need to establish outside the jury's hearing  
2 through Heather Coltman -- that will not come in without  
3 prejudice until we have further discussion about it by Heather  
4 Coltman. You have to remind the Court we have to take that  
5 outside the jury's hearing.

6 Would your response be the same for page C where it  
7 says FAC, hyphen?

8 MR. BENZION: It would be the same.

9 THE COURT: So, in all other respects, other than --  
10 and we can take that up in a moment. Other than out of order,  
11 there is no other substantive objection to the admissibility of  
12 the document; is that correct?

13 MS. GRIFFIN: Authenticity, we did have an objection  
14 to that. Dr. Alperin testified firsthand she did not recognize  
15 them until counsel represented them as Dean Coltman's notes,  
16 and she told counsel today on questioning that she was told by  
17 their office that these are Dean Coltman's notes.

18 THE COURT: Authenticity because you haven't heard  
19 from Heather Coltman saying these are my notes?

20 MR. BENZION: May I address that?

21 THE COURT: You may.

22 MR. BENZION: I asked a question that was not even  
23 about who prepared the notes. Dr. Alperin responded these are  
24 Dean Coltman's notes, and these are Dean Coltman's notes.

25 THE COURT: We can have Diane Alperin come back on the



1 stand -- why don't you come back on the stand for a moment, if  
2 we could.

3 *BY THE COURT:*

4 Q. And how do you know -- do you know that these are Heather  
5 Coltman's notes?

6 A. I was told that at the deposition.

7 Q. That is what I remember you saying. That is how you know  
8 these are Dean Coltman's notes?

9 A. Correct.

10 Q. You were told at deposition?

11 A. That was the first time I saw them.

12 *THE COURT:* Okay, you can step down. They are Heather  
13 Coltman's notes, you can ask Heather Coltman about them.

14 I have not precluded you from asking Diane Alperin  
15 about what occurred at the meeting, she was at the meeting in  
16 her capacity as the Vice Provost at that time, and she also  
17 testified about other persons who were there in their capacity,  
18 and the Defendant is not objecting that they were not there in  
19 their capacity.

20 You cannot question her about those two areas, do not  
21 get into the note taking, talk about the meetings and what  
22 happened. That is what you want, and anything above that you  
23 will get in through Heather Coltman, maybe. Maybe those two  
24 areas you won't.

25 *MR. BENZION:* I haven't had a chance to respond to Mr.

1 Curley and I want to clarify the questions I am going to be  
2 asking.

3 *THE COURT:* Okay.

4 *MR. BENZION:* Friday Mr. Curley put in an email from  
5 Robert Zoller to the Plaintiff that had a statement from Zoller  
6 to the Plaintiff and he said, Mr. Zoller told you to comply and  
7 grieve. We objected, but the question was ultimately permitted  
8 to say a writing with the statement in it and he asked whether  
9 that person said that.

10 That is what I intend to do with the notes.

11 *THE COURT:* Give me a hypothetical question, what you  
12 will be asking Diane Alperin.

13 What page should I be looking at?

14 *MR. BENZION:* Look at the 1/14 meeting, obligation to  
15 meet with him.

16 *THE COURT:* Okay.

17 *MR. BENZION:* Isn't it true at a meeting on January  
18 14th you discussed your obligation to meet with the Plaintiff?

19 *THE COURT:* Anything objectionable from the Defense?

20 *MS. GRIFFIN:* No.

21 *THE COURT:* Fine.

22 *MR. BENZION:* That is what I intend to do.

23 *MS. GRIFFIN:* Provided we don't get into those other  
24 sections.

25 *MR. BENZION:* Understood. May I respond to Mr.

1 Curley's statement?

2 *THE COURT:* Let's hold objections right now, we want  
3 to have lunch. I will stop the clock. It has been an hour and  
4 24 minutes. Let me get a sense of how much time you will be  
5 with the witness. Say an hour and 20 minutes.

6 *MR. BENZION:* I would anticipate the rest of the day.

7 *THE COURT:* That is not what you put in your trial  
8 plan, it is four hours. Is that a blanket statement or do you  
9 think, how your notes look, that you will take until five  
10 o'clock or 5:30 today?

11 *MR. BENZION:* I genuinely believe that given the way  
12 it has been going.

13 *THE COURT:* What do you mean by given the way it has  
14 been going? The witness is answering the questions. I don't  
15 know about any long delayed answers or attempts not to answer  
16 the questions.

17 *MR. BENZION:* There has been reviewing recollection,  
18 and she not answering them. She doesn't want to talk about  
19 things because they are damaging the Defendant's case.

20 *THE COURT:* There are easy ways, Judge, may I  
21 approach? Ask the witness, would there be something to refresh  
22 your recollection, yes, no, approach, and that should be able  
23 to be done.

24 I don't expect there is anything to make it  
25 disruptive. If you need the whole afternoon, I am not

1 necessarily going to cut you off unless I see it is cumulative.  
2 If you do it properly, it seems like there is a pretty good  
3 flow going, I haven't seen any problems thus far.

4 So, we will take our lunch break and return at 1:15  
5 and our witness will return to the stand.

6 MR. BENZION: For the record, there was a sidebar.

7 THE COURT: There was. Okay. Everyone have a good  
8 lunch and we will see you back -- again, to be clear on Exhibit  
9 2, it is marked only, not admitted. You will have to seek to  
10 admit it through Coltman, areas you can talk about and areas  
11 you can't. Okay?

12 MR. BENZION: Understood, your Honor.

13 THE COURT: Okay, have a good lunch.

14 *(Thereupon, a short recess was taken.)*

15 *(Thereupon, trial reconvened after recess.)*

16 THE COURT: We can bring our jurors in.

17 *(Thereupon, the jury returned to the courtroom).*

18 THE COURT: Welcome back, everyone, make yourself  
19 comfortable.

20 Our witness is on the stand and remains under oath.  
21 You may proceed with direct examination.

22 BY MR. BENZION:

23 Q. Dr. Alperin, I would like to take you back to the  
24 January 9th meeting you had in 2013. That is a meeting you  
25 attended with Heather Coltman; is that right?

1 A. I believe so.

2 Q. Prior to that meeting, did you have a meeting with the  
3 university president?

4 A. I don't remember a specific meeting, I do know the  
5 president was in my office frequently at that time.

6 Q. Are you saying you don't know whether it took place prior  
7 to the January 9th meeting?

8 A. It probably did.

9 Q. In that meeting, did you discuss the fact that you made  
10 changes to the Plaintiff's FAIR assignment?

11 A. No. That is not correct.

12 Q. Did Ms. Coltman say they made changes to the FAIR  
13 assignment?

14 A. I was told they were going to make changes to his FAIR  
15 assignment, and I told them not to do that.

16 Q. You told that to Heather Coltman?

17 A. I think the director was Melanie Merritt, and they said  
18 they were going to make changes, and I said that was against  
19 the collective bargaining agreement and I said do not make  
20 changes.

21 Q. Are you saying you don't know who told you that?

22 A. That was Heather, Dean Coltman.

23 Q. You told her not to make any changes to the agreement?

24 A. To the assignment.

25 Q. To the assignment. I apologize, I misspoke. To the

1 assignment?

2 A. Correct.

3 Q. Is it true in the January 9th meeting you told Heather  
4 Coltman not to make any more changes to the assignment as she  
5 already made changes to it?

6 A. I don't recall that. I only know I was against changes to  
7 the assignment.

8 Q. Let's talk about the meeting on January 14, 2013.

9 A. I'm not supposed to look at it, correct?

10 Q. You can turn the page of those papers in front of you.

11 That is a meeting on January 14, 2013, that you attended  
12 with Heather Coltman and Larry Glick, right?

13 A. Sounds right, yes.

14 Q. In that meeting, did you discuss your obligation to meet  
15 with Dr. Tracy?

16 A. I think at this point, you know -- the input from the  
17 community came at the end of December when the university was  
18 closed.

19 We were getting ready to reopen, and, yes, there was an  
20 obligation to meet with Dr. Tracy and understand what was  
21 happening on his end.

22 Q. In this January 14th meeting, you discussed a number of  
23 objectives; isn't that true?

24 A. Possibly.

25 Q. Isn't it true the first objective you discussed in the

1 January 14th meeting was whether to explore the potential  
2 misconduct against Dr. Tracy?

3 MS. GRIFFIN: Objection, your Honor, foundation.

4 THE COURT: Overruled. The witness can answer.

5 THE WITNESS: The complaints against Dr. Tracy that  
6 were coming into the university and transmitted to me meant I  
7 had to do due diligence to see if indeed there was misconduct.

8 BY MR. BENZION:

9 Q. So, the complaints that came into the university prompted  
10 you to look for misconduct about --

11 A. The complaints were misconduct, should this person be  
12 teaching in the classroom, was there a disclaimer, why so many  
13 people were identifying this as FAU, and we had an obligation  
14 to investigate that.

15 Q. That was the objective?

16 A. It was one of the objectives.

17 Q. It was not the number one objective?

18 A. No.

19 Q. Also at the January 14th meeting, you discussed the fact  
20 that Dr. Tracey was not going to stop publishing his views; is  
21 that true?

22 A. I believe that is what he told Dean Coltman.

23 Q. You discussed that at the meeting?

24 A. Yes.

25 Q. You discussed, you, Larry Glick and Heather Coltman should

1 read what he was blogging about, right?

2 A. I don't remember that discussion. We were reading it at  
3 the beginning, at that time I was reading his blog.

4 MR. BENZION: May I approach, your Honor?

5 THE COURT: Yes.

6 BY MR. BENZION:

7 Q. In the January 14, 2013 meeting, you discussed that the  
8 Plaintiff had First Amendment rights and that you wanted to  
9 find winning metaphors around those rights; is that true?

10 A. I don't know what that means.

11 Q. Find winning metaphors. You don't know that that was  
12 discussed during that meeting?

13 A. No.

14 Q. You don't know what you, Heather Coltman and Glick were  
15 referring to when you said winning metaphors?

16 MS. GRIFFIN: Objection, the witness said she didn't  
17 know what it meant.

18 THE COURT: Right, that is what she said. What is the  
19 next question?

20 MR. BENZION: I will move on.

21 BY MR. BENZION:

22 Q. Isn't it true in the January 24, 2013 meeting you said the  
23 Plaintiff's blogging is not academic freedom because it was not  
24 academic?

25 A. Yes, he wasn't doing something in the classroom or a



1 research assignment for FAU.

2 Q. And his writing was not academic, right?

3 A. I don't agree with that. There were still rights which  
4 were protected.

5 Q. Isn't it you true you believed this was a hobby, very  
6 different from the work at the university?

7 A. I don't remember that discussion. That is what the notes  
8 say, they are not my notes.

9 Q. Isn't it true in the January 14, 2013 meeting you discussed  
10 that Dr. Tracy's blog looked like academic work, but that was  
11 just an appearance of academic work? Isn't that true?

12 A. I am not familiar -- I can't recall that discussion.

13 Q. Isn't it true in that January 14th meeting you acknowledge  
14 that academic work has a certain level of procedures and  
15 reviews that it must go through? Isn't that true?

16 A. For peer review, yes.

17 Q. As you sit here today, you acknowledge that academic work  
18 goes through peer review, right?

19 A. Correct.

20 Q. It is subject to the critiquing by your contemporaries in  
21 your field, right?

22 A. Correct.

23 Q. And isn't it true in this meeting on January 14, 2013, you  
24 discussed that Plaintiff's blog appeared scholarly, but wasn't  
25 really scholarly?

1 A. I think there is a thread here, especially when we talk  
2 about Global Research, where at some point it is not a part,  
3 not research, but then again it may be research, and that is  
4 the discussion he had with his director.

5 Q. Are you saying some of the things the Plaintiff was working  
6 on may have been research, but may not have been research?

7 A. Correct.

8 Q. It is arguable one way or the other, right?

9 A. It is an opinion.

10 MR. BENZION: Okay let's publish Exhibit Number 1,  
11 please.

12 May I approach, your Honor?

13 THE COURT: Yes. Plaintiff's 1?

14 MR. BENZION: Yes, your Honor.

15 THE COURT: Okay.

16 MR. BENZION: It is already in.

17 THE COURT: Yes.

18 BY MR. BENZION:

19 Q. I ask you scroll to the bottom, all the way to the bottom.  
20 All the way down.

21 You are copied on this letter?

22 A. Correct.

23 Q. You were involved in the preparation of the letter; isn't  
24 that true?

25 A. I believe I saw a draft probably.

1 Q. And you had no problems with the way the letter turned out,  
2 right?

3 A. I don't believe so.

4 Q. Scroll back up, please.

5 Isn't it true at the time this letter was sent to Professor  
6 Tracy, did he have a blog -- or a disclaimer on his blog?

7 A. He did have a blog. I believe Dean Coltman was asking him  
8 about the disclaimer.

9 Q. Okay. Let's look at this paragraph.

10 In this paragraph Dean Coltman raised that Dr. Tracy raised  
11 concern about his free speech remarks?

12 A. She said she did not believe they were related to freedom  
13 of speech, right.

14 Q. Right, because he brought it up?

15 A. It was clear we were not stopping his speech, that is the  
16 intent of what we were saying. We never asked him to stop  
17 writing his blog, never curtailed what he did in the classroom  
18 or what he has written.

19 Q. Because you believed that it was right?

20 A. No. We believed in the First Amendment, never stopped his  
21 speech.

22 Q. You just fired him?

23 A. We haven't gotten to that point yet, we are in 2013 now.

24 Q. We will get to that later.

25 A. Thank you.

1 Q. Dean Coltman accused Dr. Tracy of publishing a disclaimer  
2 on the blog recently, but there is no support for that  
3 referenced in this letter, is there?

4 A. I don't know what she had. I believe she felt that at the  
5 time. You have to ask her.

6 THE COURT: I would try to direct your questions --  
7 this is a letter from Heather Coltman, I assume you are going  
8 to be asking her these questions. If there is something you  
9 need to ask the witness about this letter, I ask you to focus  
10 on that so we don't run into cumulative.

11 BY MR. BENZION:

12 Q. I agree. The last paragraph, "I asked you whether or not  
13 you had completed and filed the report of outside  
14 employment/activity form required by the BOT/UFF collective  
15 bargaining agreement. You replied that you had not. You  
16 should complete this required form and return it to the  
17 director of SCMS for her approval by February 1st, 2013."

18 Let me ask you about that statement. The form, report of  
19 outside employment/activity form, that form is not necessarily  
20 required to be turned in, is it?

21 A. It's an obligation for all employees if they have outside  
22 employment or outside professional activity.

23 Q. If they have that, right?

24 A. But I believe at this meeting we were discussing outside  
25 activity.

1 Q. Okay. Let me ask you, she doesn't -- Dr. Coltman doesn't  
2 say what activity should be on the form she is asking for,  
3 right?

4 A. Correct, but we were talking about activities at this  
5 meeting.

6 Q. Wouldn't that be more clear if she said turn in your forms  
7 for reportable outside activity since that is all that is  
8 required to be on the forms?

9 A. I can't speak for her.

10 Based on the meeting, I thought you would know what  
11 activities we were talking about.

12 Q. Let's publish Exhibit 6, please, which is already in  
13 evidence. Scroll up, please -- or down.

14 In this paragraph here I circled, Dr. Tracy said to you and  
15 Heather Coltman that his blog was not a reportable outside  
16 activity; isn't that true?

17 MS. GRIFFIN: Objection, the document is not directed  
18 to Dr. Alperin.

19 THE COURT: All right. Can you restate the question.

20 BY MR. BENZION:

21 Q. You saw the letter at the time Heather Coltman received it,  
22 didn't you, Dr. Alperin?

23 A. I saw it at some point, I can't tell you when.

24 Q. Okay. And so, in this letter you acknowledge here, as you  
25 sit here today, that Dr. Tracy said his personal blog does not

1 constitute professional practice and thus does not fall within  
2 CBA's definition of reportable activity. You acknowledge that  
3 is what Dr. Tracy said in his letter?

4 A. That is what Dr. Tracy said.

5 Q. After he said that, neither you nor Heather Coltman told  
6 him that that was wrong; is that true?

7 A. I don't know. I don't believe I did. I don't know what  
8 Dean Coltman did.

9 Q. You did not tell Dr. Tracy that he was wrong when he said  
10 that his blog was a reportable outside activity?

11 A. Again --

12 Q. Was not a reportable outside activity?

13 A. The letter was addressed to Dean Coltman, it was up to Dean  
14 Coltman to respond, it was not to me.

15 Q. Did you see this before Dr. Tracy filed his grievance in  
16 2013, and settled with the settlement you signed?

17 A. Probably.

18 Q. Before you signed that settlement agreement, did you ever  
19 tell him he was wrong when he said his blog was not a  
20 reportable outside activity?

21 A. After he filed the grievance, he had a step one meeting  
22 with Dean Coltman and step two with Dean Pratt. I do not know  
23 what he said in those meetings.

24 Q. I am asking what you said.

25 A. I did not directly respond to this letter, it was not

1 directed to me.

2 Q. Did you, in 2013, at any time communicate to Dr. Tracy that  
3 his blog was a reportable activity and what he said in the  
4 letter is wrong?

5 A. I don't believe I did.

6 Q. In 2014, did you at any time tell Dr. Tracy that his  
7 personal blog was a reportable outside activity that should be  
8 reported under the conflict of interest report as per the  
9 outside activity policy?

10 A. He was not directing that with me. He would have the  
11 conversations with the director and dean, not with me.

12 Q. So you never told him that?

13 A. Correct.

14 Q. In 2015, before Dr. Tracy was terminated, did you ever tell  
15 Dr. Tracy that his blog was a reportable outside activity?

16 A. Again, no, he doesn't report directly to me.

17 Q. And you are not aware of any communication of Dean Coltman  
18 to Dr. Tracy telling him his blog was a reportable activity in  
19 2013, are you?

20 A. I don't know.

21 Q. You are not aware of any communication from anyone at the  
22 university to Dr. Tracy telling him that the blog was a  
23 reportable activity prior to the termination in 2015?

24 A. I don't know.

25 Q. You don't know of any communication --

1 A. There was a lot of communication back and forth. I don't  
2 know specifically what --

3 MR. BENZION: I was in the middle of a question where  
4 she is answering. I am trying my best --

5 THE COURT: Okay, so both counsel and the witness  
6 try -- take a pause before, make sure the question is fully  
7 asked before the answer, and the answer is fully answered  
8 before the question.

9 BY MR. BENZION:

10 Q. Doesn't Dr. Tracy have a right to know what is expected of  
11 him?

12 A. Yes.

13 Q. If he is expected to report that blog as a reportable  
14 outside activity, shouldn't somebody have told him that?

15 A. I think somebody did.

16 Q. Didn't you say you weren't aware --

17 A. I just said --

18 THE COURT: Wait.

19 BY MR. BENZION:

20 Q. Didn't you say you weren't aware that anyone at the  
21 university told Dr. Tracy that his blog was a reportable  
22 outside activity?

23 A. You asked me if I knew of anyone responding to this letter.

24 Q. I didn't ask you if you know there was a response to the  
25 letter. I am asking you if you know of anyone telling him



1 specifically that his blog is a reportable activity that should  
2 be reported?

3 A. I think when we met in January 2013, he was told at that  
4 meeting.

5 Q. And you responded and said it is not, right?

6 A. Correct.

7 Q. After that, nobody that you are aware of told him that it  
8 was?

9 A. That I am aware of.

10 Q. Right. I want to publish Plaintiff's Exhibit 8.

11 This is the Notice of Discipline Dr. Tracy received in  
12 March of 2013, right?

13 A. Correct.

14 Q. We had this discussion earlier, you will remember, here  
15 Dean Coltman is complaining to Dr. Tracy that he is referencing  
16 FAU in his blog; isn't that true?

17 A. Correct.

18 Q. As we discussed earlier, there is nothing wrong with him  
19 referencing FAU in his blog; isn't that true?

20 A. We believe that the letter was a violation of the  
21 disclaimer, the posting of the letter.

22 Q. That is what you believe at this time?

23 A. At this time, yes.

24 Q. Although referencing FAU in your blog is not a violation of  
25 the settlement agreement or Article 5, as we discussed?

1 A. Well, there was no settlement agreement at this point.

2 Q. Let's talk about Article 5, which is what the settlement  
3 agreement is based on?

4 A. Correct.

5 Q. Okay. So, Article 5, there no prohibition in Article 5 of  
6 referencing FAU in your writing, right?

7 A. Correct.

8 Q. Why, then, in 2013, did his reference of FAU in his blog  
9 form the basis of discipline?

10 A. Because we needed to distance FAU from his blog.

11 Q. Couldn't you have distanced yourself from him without  
12 disciplining him?

13 A. This was a letter of reprimand, this is a way of getting  
14 his attention asking him to keep -- have a disclaimer.

15 Q. So, this was a reminder?

16 A. It was a letter of reprimand.

17 Q. Discipline -- when you say reprimand, you mean discipline?

18 A. The beginning, yes.

19 Q. This is Dr. Tracy's first formal discipline at the  
20 university ever, right?

21 A. Correct.

22 Q. You thought the only way you could address a non-violation  
23 of the CBA was to discipline a professor that was never before  
24 disciplined?

25 A. It is based on the incident. We don't look at somebody and

1 say how many violations have you had and we are going to  
2 reprimand you. This was an incident.

3 Q. Isn't there something called progressive discipline?

4 A. Yes.

5 Q. Doesn't the progressive discipline require you to look at  
6 the history of discipline against the professor when you are  
7 approaching discipline against that professor?

8 A. It would have to do with the incident.

9 Q. And there was no discussion, because he did not talk about  
10 FAU in the blog, why in this incident did he need to be  
11 disciplined?

12 MS. GRIFFIN: Objection, this is a misrepresentation.

13 MR. BENZION: I will move on.

14 BY MR. BENZION:

15 Q. We are going to publish Exhibit 55, 5.3(d).

16 A. All right.

17 Q. That is the provision of the CBA that requires disclaimers  
18 when faculty speak on matters of public interest, right?

19 A. Yes, that is one of them.

20 Q. It -- is there another one?

21 A. I don't know if it is in another part of the exhibit also.

22 Q. I don't know. You have been at the university for 38  
23 years, do you know of any other regulations that require  
24 faculties to use disclaimers?

25 A. It is in a lot of different places, yes, a lot of

1 documents.

2 Q. 5.3(d) doesn't say the word "disclaimer" in it, does it?

3 A. No, it doesn't say the word "disclaimer".

4 Q. That is generally how people have complied with Article  
5 5.3(d) and separated themselves from the university, using a  
6 disclaimer?

7 A. Correct.

8 Q. Article 5.3(d) doesn't prohibit faculty from referring to  
9 themselves as professors, right?

10 A. Correct.

11 Q. Doesn't prohibit faculty from using their work title in  
12 publications, right?

13 A. Again, it wouldn't matter how they are using it.

14 Q. Well, just because a faculty member might say I am a  
15 professor, that doesn't mean everything they say after that is  
16 something that the university approves of and adopts, does it?

17 A. I can't answer that in the abstract. And, yes, somebody  
18 brought me the CBA and Article 19.7 talks about no university  
19 affiliation as well.

20 Q. So, let's just say these are my words, not the university's  
21 words, right?

22 A. Correct.

23 Q. Okay. Let's publish Exhibit 7, please.

24 When Dr. Tracy entered this agreement you were directing  
25 him not to use his work title in any of the postings, right?

1 A. Correct.

2 Q. That is not something you asked any other faculty member at  
3 FAU, is it?

4 A. I don't know. I think it is a reasonable thing to ask  
5 people.

6 Q. Not to use their work title --

7 A. If they are doing something not part of their assignment --  
8 I'm sorry, go ahead.

9 Q. Do you think it is reasonable for faculty members who have  
10 attained degrees, applied, gone through vetting processes, and  
11 obtained professorship at your university to be able to refer  
12 to themselves as a professor when they speak in public?

13 A. I think they can use their title, doctor, that is something  
14 they earned, but you are asking me a question about what they  
15 are going to say and I don't know what that is.

16 Q. There is not any rule that you are aware of that prohibits  
17 a faculty member from using their work title when they speak in  
18 public; isn't that true?

19 A. They are asked to take reasonable precaution.

20 Q. So, the answer to my question is no, there is no regulation  
21 you are aware of that prohibits a faculty member to use the  
22 work title when they speak in public?

23 A. I am not aware of any.

24 Q. You wanted Dr. Tracy not to use his work title, right?

25 A. Yes.

1 Q. Because what he said was controversial and improper?

2 A. It was creating a lot of dissidence to the university and  
3 it was interfering with the operation of the university.

4 Q. It is what he said that made you want him to not call  
5 himself a professor?

6 A. And we said he could say it, we told him to try to distance  
7 himself to try to protect the university.

8 MR. BENZION: May I approach?

9 THE COURT: Yes.

10 MS. GRIFFIN: We do have an objection to this, your  
11 Honor.

12 MR. BENZION: I am not going to move it into evidence,  
13 your Honor. I don't think it is going to happen.

14 THE COURT: Which one are we talking about?

15 MR. BENZION: Exhibit 9.

16 THE COURT: If it is not in evidence, you are  
17 instructed not to read anything into the record. You can look  
18 at it.

19 BY MR. BENZION:

20 Q. Dr. Alperin, you are looking at an article published; isn't  
21 that true?

22 A. Correct.

23 Q. This is an article published by three faculty members of  
24 the university?

25 A. Correct.

1 Q. One of them is Jeffrey Morton?

2 A. Yes.

3 Q. Before Jeffrey Morton published this article you knew it  
4 was going to be published; isn't that true?

5 A. I believe he told me it had been sent to the Palm Beach  
6 Post.

7 Q. When he told you that, you didn't ask him whether he had a  
8 disclaimer on the article, did you?

9 A. I don't recall whether I did, but he did not identify  
10 himself as a faculty member in the letter.

11 Q. When he showed you this article, you didn't ask him -- you  
12 didn't remind him to fill out a reported outside employment  
13 activity form, did you?

14 A. No.

15 Q. Does the university approve of and adopt the statements in  
16 this article?

17 A. I would have to -- he is talking about --

18 *THE COURT:* Well, wait a minute. You can't comment on  
19 the content of the document, it is not evidence.

20 *THE WITNESS:* I believe it was their opinions.

21 *BY MR. BENZION:*

22 Q. In this document I handed you, Mr. Morton is identified as  
23 a professor in this article, isn't he?

24 A. He -- faculty did not identify themselves as faculty, the  
25 Palm Beach Post did an editor's note identifying them as

1 faculty. This is not uncommon, that happens.

2 Q. If somebody else identifies you as faculty, that excuses  
3 you from 5.3(d)?

4 A. Yes.

5 Q. If somebody else does it?

6 A. Yes. In the current collective bargaining agreement we  
7 clarify that, if somebody is identifying you it is not a  
8 violation.

9 Q. You said in the current collective bargaining agreement.  
10 What about the collective bargaining agreement during this  
11 time?

12 A. That is why we made changes in things that happen.

13 Q. So, in 2013, you made sure that they made clear the  
14 statements that we were attributing to you were not the  
15 statements of the university?

16 A. Correct.

17 Q. That is what was required at that time?

18 A. Yes.

19 Q. Is not what the other faculty members did when they  
20 published this; is that true?

21 A. They didn't identify themselves as faculty.

22 Q. You said if somebody else identified a faculty member --  
23 let me withdraw that phrase.

24 Isn't this similar to the situation when Dr. Tracey was  
25 identified by the publisher of that book as a faculty member?



1 A. No, I don't think so.

2 Q. You heard testimony that Dr. Tracy didn't write that bio in  
3 that book, that it was written by somebody else; isn't that  
4 true?

5 A. But when he had subsequent editions to that book, he knew  
6 it was in there.

7 Q. You mean the editions after he was fired?

8 A. I don't know when they were published.

9 Q. Why are you bringing them up?

10 A. I think he had several editions.

11 Q. So, before Mr. Morton and these other faculty members  
12 published this article without a disclaimer, you didn't ask  
13 them if they had a disclaimer and put it on a reported outside  
14 activity form.

15 What about after it was published, did you remind them they  
16 had an obligation to disclaim themselves?

17 A. No.

18 Q. Did you remind them they should report this on an outside  
19 employment/activity form?

20 A. No.

21 Q. Why not?

22 A. This is a letter to the editor.

23 Q. That is a determination that you are able to make after  
24 reading something?

25 A. They all have supervisors, nobody brought that up -- I

1 don't know whether somebody talked to them or not, whether  
2 their chairs spoke to them. I don't know.

3 Q. You didn't reach out to their chairs to make sure they were  
4 complying with 5.3(d) and Article 19, right?

5 A. No.

6 Q. Aren't the obligations under 5.3 and Article 19 extremely  
7 significant?

8 A. Yes, but they did not identify themselves as faculty, that  
9 was done by the paper as the article was published. They did  
10 not send it in as faculty.

11 Q. Weren't you concerned about the statements made in this  
12 article being attributed to the university?

13 A. I think it is attributed to them.

14 Q. The answer is no, you weren't concerned about the  
15 statements being attributed to the university?

16 A. I don't remember them being concerned.

17 Q. After the article was published, you became aware somebody  
18 took this article and put it in the mailboxes of the faculty in  
19 the School of Communication where Dr. Tracy works; isn't that  
20 true?

21 A. Correct.

22 Q. You became aware of that from Dr. Tracy; isn't that true?

23 A. Correct.

24 MR. BENZION: Exhibit 58 is in evidence, can we  
25 publish 58, please. Plaintiff's 58. I think it is in

1 evidence.

2 MS. GRIFFIN: It is not.

3 THE COURT: Yes, Plaintiff's 58 is in evidence. On  
4 11/30, it was put in evidence.

5 BY MR. BENZION:

6 Q. This is the email -- Plaintiff's 58 is the email that Dr.  
7 Tracy sent you about this appearing in his mailbox, in his  
8 school box?

9 A. Correct.

10 Q. And he forwarded materials to you and his supervisors?

11 A. It appears to.

12 Q. Those other communications, they evidence his attempts to  
13 resolve what he considered workplace harassment with his  
14 supervisors before bringing the matter to your attention,  
15 right?

16 A. Yes, he addressed it with his director.

17 Q. So, at the top, Dr. Tracy characterized what was happening  
18 to him as a campaign of personal harassment to you, correct?

19 A. Right.

20 Q. After you read this email, you didn't conduct any kind of  
21 investigation into this claim of harassment by Dr. Tracy, did  
22 you?

23 A. I called the dean. I called and asked her what had been  
24 happening.

25 Q. What else did you do to conduct this investigation?

1 A. That is all I did. I delegated that to the dean.

2 Q. Isn't it true you did not conduct an investigation to  
3 determine who did this act, placing these articles in his  
4 mailbox?

5 A. I did not personally conduct an investigation. I asked the  
6 dean about it. Understand that this was an article that was  
7 already published in the newspaper and that faculty -- I am not  
8 clear on this particular school, but most faculty mailboxes are  
9 open cubbyholes that people put material into all the time.

10 Q. You never told Dr. Tracy you called his dean to --

11 A. No.

12 Q. I apologize, what is the answer?

13 A. I don't recall that.

14 Q. And you never responded to Dr. Tracy's email?

15 A. I believe I did not, correct.

16 Q. At this time, did you not care that there was potentially  
17 workplace harassment happening at your school?

18 A. No. Again, I delegated that to the college.

19 MR. BENZION: May I approach, your Honor?

20 THE COURT: Yes.

21 MR. BENZION: For the record, I handed the witness  
22 Plaintiff's 85 for identification purposes.

23 BY MR. BENZION:

24 Q. Dr. Alperin, this is an email you wrote, right?

25 A. Yes, it looks like it.

1 Q. And you wrote this email on October 9, 2013, correct?

2 A. Correct.

3 Q. And you sent this email --

4 MR. CURLEY: Your Honor, could we get a copy, please?

5 BY MR. BENZION:

6 Q. And this is related to matters within the scope of your  
7 employment?

8 A. Yes.

9 MR. BENZION: I would like to move this into evidence,  
10 Plaintiff's 85.

11 MS. GRIFFIN: No objection.

12 THE COURT: Plaintiff's 85 is admitted without  
13 objection --

14 MR. BENZION: Defendant's 85, your Honor.

15 THE COURT: Defendant's 85?

16 MR. BENZION: That is correct, your Honor.

17 THE COURT: Okay, Defendant's 85 is admitted without  
18 objection.

19 (Whereupon Defense Exhibit 85 was marked for evidence.)

20 MR. BENZION: May I publish, your Honor?

21 THE COURT: Yes.

22 BY MR. BENZION:

23 Q. Okay. From Diane Alperin, September October 29, 2013, to  
24 Morley Barnett, cc Gary Perry, James Capp, Diane Alperin.  
25 Subject: Report of the audit of employee outside activities,

1 attachment 1019113.pdf.

2 "Morley, thank you for the opportunity to review your  
3 report on the audit of employee outside activities and  
4 additional/dual compensation. We are pleased with your  
5 findings.

6 "Since our meeting, as promised, I did followup with the  
7 appropriate deans. In regard to employees who acknowledged  
8 outside activities for whom outside activity reports were not  
9 on file in HR: Khi Thai has indicated he is no longer involved  
10 in this project. Don Torok had previously submitted a report  
11 of outside employment or professional activity. I signed it on  
12 8/8/13.

13 "Zhongwei Li, Brian McConnell and Heather Coltman have now  
14 submitted the appropriate forms.

15 "For the test of select faculty for outside activity  
16 disclosure: Homayoon Abtahi has now submitted the report of  
17 outside employment or outside activity form. Mohammad Ilyas is  
18 no longer active with this company. Ping Cheng has now  
19 submitted the appropriate form.

20 "All the documentation is attached. Please let me know if  
21 you need anything else. Diane."

22 How did I do with the names?

23 A. You did pretty good.

24 Q. Thank you, put a lot of effort into that.

25 All right. So, before you wrote this email, someone told

1 you that there was a number of faculty who had not turned in  
2 their report about side employment, professional activity  
3 forms, right?

4 A. Correct, as part of the audit.

5 Q. And you learned what particular activities weren't put on  
6 those forms, right?

7 A. Correct.

8 Q. Let's look at Khi Thai for example.

9 A. Khi Thai.

10 Q. That is one I was off on?

11 A. Right.

12 Q. Khi Thai. Khi Thai indicated he is no longer involved in  
13 this project. You are referring to a specific project there?

14 A. Correct.

15 Q. Khi Thai told you, I am no longer involved in that project?

16 A. Right.

17 Q. That is why you went to him and said are you involved in  
18 this project?

19 A. Actually the dean went to him, I worked through the dean on  
20 this.

21 Q. You worked through a dean to ask him specifically if he was  
22 involved in a particular project, right?

23 A. Correct. He had --

24 Q. Do you agree you did the same thing with these three  
25 individuals, including Heather Coltman?

1 A. Correct.

2 Q. You went to them, told them the specific activities that  
3 weren't disclosed and you had them put it on the forms?

4 A. Yes, going through the deans or with Dean Coltman herself.

5 Q. You didn't prepare a letter to them and say turn in your  
6 forms, right?

7 A. No.

8 Q. Mohammed Ilyas, he was faculty?

9 A. Dean.

10 Q. He was a dean at this time?

11 A. Yes.

12 Q. In 2014, he was a dean?

13 A. Correct.

14 Q. In 2015, he was a dean?

15 A. Correct.

16 Q. In 2016, he was a dean?

17 A. Yes.

18 Q. Okay. And a dean, as any faculty members at the school, he  
19 is complying with all policies?

20 A. Yes.

21 Q. And also enforcing them, right?

22 A. Yes.

23 Q. And responsible for, as a dean, clarifying policies to his  
24 faculty, right?

25 A. Correct.



1 Q. Okay. Mohammed Ilyas is no longer active with this  
2 company. To clarify, you or through a dean went to Ilyas,  
3 identified a specific company and asked them for a report of  
4 that involvement with that company, right?

5 A. Correct. My recollection is that for Khi Thai and Mohammed  
6 Ilyas they submitted forms for the previous year and they  
7 hadn't submitted a form for the current year. That is why they  
8 were part of the audit.

9 Q. So, when you did this -- by the way, you said you worked  
10 through the deans.

11 Did you meet with any of these people personally?

12 A. No.

13 Q. Okay. Did the deans meet with these persons personally?

14 A. I don't know.

15 Q. You don't know if they met with them or had a phone  
16 conversation?

17 A. Correct.

18 Q. Do you know if the way the questions were resolved were  
19 through letters?

20 A. I don't know. Some communication between the dean and the  
21 faculty, but I don't know what it was.

22 Q. The result of the audit referenced in this email told you  
23 there were a number of people who hadn't submitted forms for  
24 reported outside activities?

25 A. Some.

1 Q. Some?

2 A. Yes.

3 Q. So, if everybody at the school knows how to follow the  
4 policy, why wouldn't these people know to put these activities  
5 on the forms?

6 A. I don't know. We have many documents out there telling  
7 them to do this, but when they were asked, they completed them.

8 Q. Many documents were on the form?

9 A. Many documents.

10 Q. Confidentiality policies are existing on a number of  
11 documents at the university?

12 A. Yes.

13 Q. The requirement to report conflicts of interest come from a  
14 number of --

15 A. For all employees, not all employees are part of the  
16 collective bargaining unit.

17 Q. Employees not members of the CBA are required to follow the  
18 policy?

19 A. Right.

20 Q. The policy is not just contained in the CBA, right?

21 A. Correct.

22 Q. Before we move on, with respect to the folks that weren't  
23 reporting their reported outside activities, were they  
24 complying with the highest standard of ethics at Florida  
25 Atlantic University?

1 A. I can't answer the specifics of that. I can't speak to  
2 them individually.

3 Q. Aren't you not ethical if you don't report an outside  
4 activity?

5 A. I believe as part of the ethical responsibilities and the  
6 honor code we have to report it, yes.

7 Q. So, just not reporting it, you are unethical, right?

8 A. I think if you fail to report it, and then you do, it is  
9 better than refusing to report.

10 Q. When you say refusing, what do you mean?

11 A. If you are asked to report it and you say I am not going  
12 to, that is refusing.

13 Q. That is refusing, when you say I am not going to, right?

14 A. Yes.

15 MR. BENZION: May I approach?

16 THE COURT: Yes.

17 BY MR. BENZION:

18 Q. For the record, I handed the witness Defendant's 100.

19 The document I handed you is a series of emails, is that  
20 right?

21 A. I don't know if I have it all, it is page two.

22 Q. Yes. At the very top you are cc'd, right?

23 A. There must be something above that.

24 Q. But you are copied on an email that includes other emails,  
25 right?

1 A. Correct.

2 Q. Okay. Isn't it true in October 2014, there was a Dr.  
3 Agarwal at FAU who didn't understand the report of outside  
4 activity conflict of interest policy?

5 A. I'm sorry, I am just reading the email.

6 Q. Why don't you read the last paragraph on this page, please.

7 MS. GRIFFIN: Objection, it is not in evidence yet.

8 THE COURT: Nothing should be read --

9 BY MR. BENZION:

10 Q. I don't mean out loud, to yourself, Dr. Alperin, last  
11 paragraph on the page.

12 A. Okay. It is not complete, but I read it.

13 Q. In October 2014, there was a Dr. Agarwal at FAU?

14 A. Yes.

15 Q. Dr. Agarwal did not understand the report of outside  
16 activity/conflict of interest policy, right?

17 A. That is what he is saying. That is what Dr. Ilyas is  
18 telling us here.

19 Q. Dr. Ilyas met with him, right?

20 A. I believe so.

21 Q. Okay.

22 A. I wasn't at the meeting, but I believe Dean Ilyas followed  
23 up.

24 Q. Dean Ilyas, in 2014, represented that he met with Dr.  
25 Agarwal, right?

1 A. Yes.

2 THE COURT: Only ask questions of the witness to which  
3 she has firsthand knowledge. I believe you will be calling  
4 witnesses who know about the documents. Be clear if she has  
5 firsthand knowledge as opposed to reading from a document to  
6 inform her.

7 BY MR. BENZION:

8 Q. You were copied on this email?

9 A. Yes.

10 Q. You, at one point, would have read the email?

11 A. Yes.

12 Q. You don't ignore the emails you receive?

13 A. No, but I get a lot.

14 Q. The outside activity policy is important, if you get an  
15 email about the professor not following the policy, you would  
16 read that email?

17 A. Yes.

18 Q. You read this email when you got it?

19 A. I believe so.

20 Q. In 2014, Dr. Ilyas represented to you, or he represented  
21 that he met with Dr. Agarwal to discuss Dr. Agarwal's failure  
22 to report outside activities, right?

23 A. Correct.

24 Q. Dr. Alperin, you can stop looking at that document now. I  
25 will stop talking about the matters in the document.

1 A. Okay.

2 Q. I am going to direct your attention to the year 2015, okay?

3 A. Okay.

4 Q. So, in September of 2015, you were still getting complaints  
5 about Dr. Tracy's blogging, right?

6 A. I think we got one, I don't remember a lot.

7 Q. So, in September you have a recollection of at least  
8 receiving one complaint about Dr. Tracy's blogging, right?

9 A. I think you showed me one at the deposition.

10 MR. BENZION: Publish 18, please, Plaintiff's 18,  
11 which is into evidence.

12 THE COURT: Okay.

13 BY MR. BENZION:

14 Q. We talked about the emails on the first couple days of  
15 trial, this is in evidence.

16 In this email Dr. Williams, David Williams, says to Dr.  
17 Tracy and others to fill out their outside employment form;  
18 isn't that true?

19 A. Correct. Well --

20 Q. Let's read what he says. "Just a friendly reminder, if you  
21 have outside employment income you will need to fill out the  
22 linked outside employment form." That is what he said, right?

23 A. Correct.

24 Q. That is an accurate representation of the policy?

25 A. Well, it is true if you have outside employment, you need

1 to fill out the form. Also, if you don't have outside income,  
2 you should fill out the form.

3 Q. Under what other circumstances?

4 A. If you have professional activity.

5 Q. And what else?

6 A. What else? I am not sure what your question is.

7 Q. Okay. There are more things that are reportable under the  
8 conflict of interest/activities policy than just outside  
9 employment income, right?

10 A. Correct.

11 Q. Why wouldn't he just say this limited category of things  
12 needs to be reported under the policy?

13 MS. GRIFFIN: Objection, foundation and calls for  
14 speculation.

15 THE COURT: Sustained.

16 BY MR. BENZION:

17 Q. Wouldn't it be clearer to the faculty that Mr. Williams is  
18 speaking to if Mr. Williams would have discussed reportable  
19 outside activity here rather than outside employment income?

20 A. He could have been clearer, but also there is a link there  
21 to the form and the form also has the guidelines.

22 Q. Do you agree with the way Dr. Williams is reminding his  
23 faculty to comply with a very important policy?

24 A. I'm glad he is reminding them. Could it have been better?  
25 Yes.

1 Q. Okay. So, after you saw this email, did you do anything --  
2 did you do anything -- sorry, I am asking questions very  
3 deliberately.

4 A. Okay.

5 Q. After you saw this email, did you do anything to correct  
6 David Williams' instruction to his faculty?

7 A. I called Dean Coltman.

8 Q. And did what?

9 A. And told her that I had seen this email -- I'm sorry, I  
10 don't know at what point I saw the email. At the point I did,  
11 I called her and said the email was correct but incomplete.

12 MR. BENZION: 31.

13 THE COURT: Plaintiff's 31 is marked.

14 MR. CURLEY: It is not in?

15 THE COURT: I have it marked for ID on 11/30.

16 MR. CURLEY: I am looking for it.

17 THE COURT: We are talking about Plaintiff's, right?

18 MR. CURLEY: I don't see it.

19 THE COURT: It should be there as a marked one.

20 Everyone was supposed to organize the piles for a marked one.

21 It should be there.

22 BY MR. BENZION:

23 Q. Let me ask you one more question about the email on the  
24 screen here.

25 This email says "Friendly reminder," right, from David



1 Williams to his whole faculty, "Friendly reminder," right?

2 A. I don't see friendly reminder -- oh, yes.

3 Q. Exhibit 18 on the screen.

4 A. Yes.

5 Q. Friendly reminder?

6 A. Yes.

7 Q. There is no deadline given here, right?

8 A. I don't see one.

9 Q. Okay.

10 MR. CURLEY: 31 is okay.

11 MR. BENZION: 31 is okay?

12 MR. CURLEY: Yes.

13 MR. BENZION: Let's see 36.

14 THE COURT: So, now you are talking about Plaintiff's  
15 36, that is in evidence.

16 BY MR. BENZION:

17 Q. Scroll down, please.

18 Okay. Let's look at the email on the screen here. Can you  
19 scroll to the top to see who is writing this email -- at the  
20 bottom, sorry.

21 You see this is a message sent by James Tracy, right?

22 A. Yes.

23 Q. And this is a message that he sent to Alex Schoenmakers,  
24 correct?

25 A. Correct.

1 Q. Okay. He is expressing some concern about submitting his  
2 annual assignment in the check box?

3 A. Right.

4 Q. In this section he's quoting that drop down box with the  
5 check box in it, right?

6 A. Correct.

7 Q. And you would agree that his concern was that he would be  
8 affirming his compliance with the policy that he didn't  
9 understand, right? You agree that is what his concern was,  
10 right?

11 A. Yes, he is concerned with the box.

12 Q. Okay.

13 A. Affirming that he has to report.

14 Q. Okay. Now, I want you to look at this whole email here,  
15 and I want you to tell me where do you see that Dr. Tracy says  
16 I'm not going to do something.

17 A. This is just one of, I believe, many communications.

18 Q. Do you agree that Dr. Tracy never said in this email to  
19 Schoenmakers that he is not going to check the click down box?

20 A. I believe -- I don't see it in this particular email.

21 Q. He said actually there needs to be some clarification,  
22 right?

23 A. Right, and he points to a number of documents that he is  
24 aware of, I guess.

25 Q. To point out that the language in the drop down doesn't

1 actually match the language in the policies?

2 A. I don't agree with that, but that is what he says.

3 Q. By the way, just because he quoted the policies, that  
4 doesn't necessarily mean that he understands them, right?

5 A. I believe, in my view, he understands them. He was  
6 pointing to them in a number of instances and in his email he  
7 was providing them to David Williams.

8 Q. In your view, he understood them even though he asked for  
9 additional clarification?

10 A. Yes.

11 Q. Scroll up, please. Thank you. Keep on going a little more  
12 to see Mr. Williams' email.

13 Now, you heard testimony and you are aware of the fact that  
14 Dr. Tracy believed that the check box was new, right?

15 A. I heard him say that yes.

16 Q. And you knew at this time, in 2015, that he believed that  
17 the check box was new, right?

18 A. Correct, but it was not new.

19 Q. We will get to that. He said he thought the check box was  
20 new, and here is David Williams responding to him and he  
21 doesn't address whether the check box is new in this email or  
22 not, does he?

23 A. Not in this email.

24 Q. Okay.

25 A. I believe he does it in another email.

1 Q. Let's see, let's look at this here. I want to focus on  
2 this. (Indicating.)

3 David Williams said, "Your assignment as listed is exactly  
4 the same one you signed previously. Please sign it at your  
5 earliest opportunity."

6 Isn't it true at the time David Williams sent the email to  
7 Dr. Tracy that Dr. Tracy already signed his annual assignment  
8 for 2015?

9 A. Yes, but you have to ask Mr. Williams the specifics, but  
10 there are changes that were required to be signed.

11 Q. What were the changes?

12 A. I don't know. You have to ask David Williams.

13 Q. Isn't the change the check box?

14 A. No.

15 Q. You said you knew what the changes were?

16 A. I didn't know what the changes to the assignment were.  
17 What the deans and chairs were under the gun to do is get all  
18 the assignments approved in FAIR. To get them approved in the  
19 faculty assignment reporting system, you have to check the box  
20 and go on and accept your assignment.

21 I believe -- I know the check box was added in 2014, as a  
22 result of the audit and we were monitoring FAIR because of  
23 another audit.

24 Q. Didn't David Williams believe the check box was new in  
25 2015?

1 A. I believe --

2 MS. GRIFFIN: Objection, foundation, calls for  
3 speculation.

4 THE COURT: Only answer if you know what David  
5 Williams knew or didn't know. If not, don't speculate.

6 THE WITNESS: Okay, I won't speculate.

7 BY MR. BENZION:

8 Q. You learned in 2015, David Williams believed that the check  
9 box was new?

10 A. I believe there is an email that he says it was new, and I  
11 also called the dean at that point and checked the faculty  
12 information technology to be sure it had been added in 2015.

13 Q. David Williams is the guy who is discussing all the annual  
14 assignments to the faculty before they sign it, right?

15 A. I don't know.

16 Q. Here he is discussing it with Jim, right?

17 A. I don't understand your question. He is director of the  
18 school, he does the assignments for the faculty.

19 Q. He does the assignments?

20 A. Yes.

21 Q. He is involved in the process where the faculty submits the  
22 assignment?

23 A. Yes, the assignment is FAIR.

24 Q. Isn't the process that you go into FAIR and the check box  
25 comes down and you must check it and you assume your

1 assignment?

2 A. You accept your assignment.

3 Q. You accept your assignment?

4 A. Yes, the assignment is in FAIR, I don't believe the faculty  
5 member puts it in FAIR.

6 Q. The faculty member discussed it with his supervisor and  
7 that is what is put into FAIR, and they must accept the  
8 assignment in FAIR, right?

9 A. Correct, and you need to clarify that with David Williams,  
10 how it is in the school of communication. I believe they have  
11 different people in charge of different programs.

12 Q. How many faculty in the school of communications?

13 A. I don't know, looks like a lot.

14 Q. So, in dealing with all of those faculty and turning in  
15 their annual assignments, this check box had never come up to  
16 David Williams before such that in 2015 he thought it was new?

17 A. Are you saying nobody objected to it before?

18 Q. It never came up before?

19 A. Not to my knowledge.

20 Q. Is that because it was new at this time?

21 A. No.

22 Q. The last thing says, "Please sign your assignment at your  
23 earliest opportunity," right?

24 A. Right.

25 Q. He doesn't give a deadline here, does he?

1 A. No, he doesn't.

2 MR. BENZION: May I approach?

3 THE COURT: Yes. Which one are we on now?

4 MR. BENZION: Showing the witness what has been marked  
5 as Plaintiff's 32.

6 BY MR. BENZION:

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. This is the email you just talked about. This is the email  
10 through which you learned that David Williams believed the  
11 check box was new, right?

12 A. Correct.

13 Q. And this is an email that Heather Coleman sent to you,  
14 right?

15 A. Correct.

16 Q. And that is because this was involving clarifying enforcing  
17 policies and Heather Coltman should be communicating about  
18 those things, right?

19 A. Yes.

20 Q. Right?

21 A. Yes.

22 Q. Okay.

23 THE COURT: Is it Plaintiff's 32?

24 MR. BENZION: It is, and at this time I would like to  
25 move this into evidence.

1           *MS. GRIFFIN:* No objection.

2           *THE COURT:* Plaintiff's 32 admitted without objection.

3           (Whereupon Plaintiff Exhibit 32 was marked for evidence.)

4           *MR. BENZION:* Can we publish?

5           *THE COURT:* Yes.

6       *BY MR. BENZION:*

7       *Q.* Here is the email from David Williams we were referencing,  
8       from David Williams to Linda Johnson and Heather Coltman and to  
9       Diane Alperin?

10      *A.* Yes.

11      *Q.* FYI, right?

12      *A.* Yes.

13      *Q.* From David Williams, "Hi, Linda, suggestions on below, as  
14      far as I could tell, the affirm and check box is new, but I do  
15      not know the legal definitions and restrictions on conflict of  
16      interest."

17           Let me stop right there.

18           Would you agree David Williams is saying he doesn't know  
19      the definitions of conflict of interest at this time?

20      *A.* He is saying that, yes.

21      *Q.* So, in 2015, Dr. Tracy's faculty member didn't know the  
22      conflicts of interest?

23      *A.* Dr. Tracy --

24      *Q.* Dr. Tracy's supervisor didn't know the definition of  
25      conflict of interest?



1 A. That is what he is saying.

2 Q. How is Dr. Tracy supposed to know if his supervisor doesn't  
3 know?

4 A. Two different people.

5 Q. What does that mean?

6 A. I do think Dr. Tracy knew.

7 Q. By the way, he says he is refusing to sign. That is not  
8 true, is it?

9 A. That is what the email is saying, I don't know. I can't  
10 speak for David Williams.

11 Q. David Williams is looking for help from Linda Johnson and  
12 Heather Coltman at this time, right?

13 A. Correct.

14 Q. I notice this email chain doesn't include an email from  
15 Heather Coltman or Linda Johnson answering any of David  
16 Williams' questions, does it?

17 A. I don't see that. I doubt there was one.

18 Q. Are you aware of any such emails?

19 A. I am not aware. I don't know.

20 Q. Were they able to answer his questions?

21 A. I don't know.

22 Q. Why are you being involved at this time? Isn't this a  
23 minor issue at this time?

24 A. I don't know. Heather was involving me, I don't know why,  
25 you have to ask her.

1 Q. You are number three in charge of the university, right?

2 A. Number two on the academics side.

3 Q. Number two?

4 A. There is the president in charge of the whole university,  
5 many vice-presidents. I only report to the Provost.

6 Q. You are number two at this time?

7 A. Yes.

8 Q. Between emails regarding one faculty member asking about  
9 the check box and this goes up to number two at this time?

10 A. Dean Coltman did that, you have to ask her why.

11 Q. Isn't it true this was brought to your attention at this  
12 time because it had to do with Professor Tracy? Isn't that  
13 true?

14 A. I don't know.

15 Q. Scroll up, please.

16 Let's go back to 36. Can we see 32 one more time, please.

17 So, David Williams sent this email on October 27, 2015.

18 "As far as I can tell, the affirm and check box is new." Do  
19 you agree?

20 A. Correct.

21 Q. And then on October 27, 2015, the same day, he tells Jim  
22 there is nothing new and you are adding layers to things that  
23 are not here; isn't that true?

24 A. That is what he is saying.

25 Q. Would you agree that he is telling Dr. Tracy one thing and

1 then in internal communications with his supervisors he is  
2 saying something different?

3 A. I don't know. I don't know in sequence what he was saying  
4 when.

5 Q. Well, on the same day, October 27, 2015, "as far as I can  
6 tell, the affirm and check box is new," and on the same day to  
7 Dr. Tracy, nothing new here.

8 MS. GRIFFIN: Objection, your Honor, calls for  
9 speculation.

10 BY MR. BENZION:

11 Q. So, on the same day --

12 MR. BENZION: I apologize, there is a standing  
13 objection. I will withdraw and ask a new question.

14 THE COURT: Okay.

15 BY MR. BENZION:

16 Q. On the same day, October 27, 2015, he is telling Dr. Tracy  
17 there is nothing new, but telling his supervisors it looks new,  
18 right?

19 MS. GRIFFIN: Objection, your Honor, he is  
20 misstating -- mischaracterizing the document.

21 THE COURT: The witness has the document in front of  
22 her. You can ask about the document so there is no confusion.

23 THE WITNESS: I don't know what happened between  
24 12:03, when he writes to -- well, actually at 9:44, when he  
25 writes to the dean and the associate dean and now we are at

1 almost one o'clock, correct?

2 *BY MR. BENZION:*

3 Q. I'm sorry, I can't answer your questions.

4 A. What I am saying is that he is sending his explanation to  
5 Dr. Tracy a few hours after he had sent this original email.  
6 Perhaps he got some clarification in the interim, but I can't  
7 answer that.

8 Q. Let's look at what is on the screen in front of you. This  
9 email sends a link with outside business V2 pdf, right?

10 A. That is correct.

11 Q. That is a link to the report of outside  
12 employment/professional activity form, right?

13 A. Correct.

14 Q. Why in this link isn't it just called outside business?

15 A. I don't know.

16 Q. Isn't that confusing?

17 A. I don't know. When you click on it, it goes to the report  
18 of outside employment, outside professional activity form, a  
19 form of Human Resources.

20 Q. Isn't it more than just business stuff that is reportable  
21 under the policy?

22 A. Yes.

23 Q. Things that are reportable under the policy typically  
24 relate to financial conflict of interests, right?

25 A. There is nothing on the form that asks for the amount of

1 money that you are receiving.

2 Q. Scroll all the way forward. 31.

3 THE COURT: Plaintiff's 31. Is it Plaintiff's 31?

4 MR. BENZION: Yes.

5 THE COURT: That is marked at this time.

6 MR. BENZION: Move it into evidence, your Honor.

7 THE COURT: Any objection?

8 MS. GRIFFIN: No objection.

9 MR. BENZION: May I publish?

10 THE COURT: Yes. Plaintiff's 31 is now admitted into  
11 evidence, you may publish.

12 (Whereupon Plaintiff Exhibit 31 was marked for evidence.)

13 BY MR. BENZION:

14 Q. Can you scroll down.

15 Do you see this is the email that we just reviewed, nothing  
16 new, copy of regulations, nothing new. That is the email we  
17 just talked about?

18 A. Correct.

19 Q. Let's go back up.

20 Would you agree this is Dr. Tracy's response to that email  
21 from David Williams?

22 A. Correct.

23 Q. Okay. I will read this part, "In light of the above, I  
24 would be much more comfortable electronically signing the  
25 annual assignment with these qualifications if the

1 administration or its counsel can produce a signed statement  
2 asserting its position that my personal activities (media  
3 criticism, alternative journalism, quote, blogging) in no way  
4 constitute legitimate intellectual/creative endeavors and thus  
5 cannot be considered a conflict of interest, conflict of  
6 commitment or outside activities as defined in the  
7 administration's policy addressing such concerns."

8 Let's talk about this statement.

9 Would you agree Dr. Tracy is offering to sign the annual  
10 assignment?

11 A. I am lost because you are talking about a paragraph -- yes,  
12 he offered to sign the assignment if we agree to something that  
13 we have no form on.

14 Q. If you --

15 A. He is not agreeing to fill out the report of outside  
16 professional activities form, he is asking us to make a  
17 decision on that without the form.

18 We would have gladly made a decision with the form.

19 Q. You would decide whether it is reportable after he reports  
20 it?

21 A. Absolutely. Part of the requirement is report it and have  
22 a discussion with your supervisor so it is clear.

23 Q. Don't you have a discussion with your supervisor beforehand  
24 in order to determine whether it is reportable or not?

25 A. The supervisor needs to know what it is. He can put it on

1 the form and discuss it with the supervisor, and it could have  
2 been approved and it would have been over.

3 Q. When you learned the faculty members didn't have activities  
4 on their forms you went and talked to them and told them to  
5 report it?

6 A. Right, and they didn't.

7 Q. You guys determined that they were reportable before they  
8 were reported, right?

9 A. Again, I wasn't involved in those discussions, but that was  
10 the discussion they had with the dean and they reported it.

11 Q. The answer was yes, you determined they were reportable  
12 before they were reported, right?

13 A. Yes.

14 MS. GRIFFIN: Objection, mischaracterizes her  
15 testimony.

16 THE COURT: I believe the answer just answered was  
17 yes. So, overruled.

18 BY MR. BENZION:

19 Q. So, with respect to the other faculty members, you were  
20 able to report the other activities were reportable before they  
21 filled out the forms, but with respect to Dr. Tracy, you needed  
22 the activities on the forms before you could determine whether  
23 they were reportable or not, right?

24 A. He was asking for a determination here that I did not  
25 believe could be made without the form.

1 Q. Couldn't you go and look at the blogging activity at this  
2 time and --

3 A. I am --

4 Q. -- and decide whether or not it should be reported?

5 A. I am not looking at content. I am looking at the activity,  
6 and it was up to the form, the form goes to the director, dean,  
7 and Vice Provost.

8 Q. You are not looking at content?

9 A. Correct, I am not looking at his content and making any  
10 opinion on the content of his blog, it is strictly the  
11 activity.

12 Q. When you engage -- not all outside activities are  
13 reportable, right?

14 A. All outside professional activities are reportable.

15 Q. Professional activities?

16 A. Yes.

17 Q. That is the qualifier you just gave?

18 A. Yes.

19 Q. How do you know something is a professional activity if you  
20 don't look at it?

21 A. If it is related to your profession, and that is up to the  
22 faculty member and the director or chair person.

23 Q. It is up to the faculty member to determine if something is  
24 reportable?

25 A. It is an honor system, they have an activity, we honor them



1 to report it. We have 4,000 employees.

2 Q. When Heather Coltman didn't turn in her forms she was  
3 violating the honor system?

4 A. As soon as she was told, she did. She had done it in the  
5 past, she neglected it that year.

6 Q. Is that a yes?

7 A. Yes.

8 Q. All those other faculty members I showed you that weren't  
9 turning in their forms, they were violating, too?

10 A. Yes.

11 Q. Weren't they following policies in that the activities  
12 weren't reportable?

13 A. I don't know whether they did or not.

14 Q. If it is up to the faculty member and they decide it is  
15 not, then what happens?

16 MS. GRIFFIN: Objection, mischaracterizes her prior  
17 testimony.

18 THE COURT: Would you restate without suggesting her  
19 answer and see what the witness says.

20 BY MR. BENZION:

21 Q. You said a moment ago --

22 THE COURT: Just ask the question. It gets into  
23 possible --

24 MR. BENZION: I don't recall the question I just  
25 asked. I am asking a lot of questions right now. I can try to

1 get there another way.

2 *THE COURT:* If it is up to the faculty member and they  
3 decide it is not, what happens?

4 *MR. BENZION:* Yes.

5 *THE COURT:* Can the witness answer that question?

6 *THE WITNESS:* If the supervisor knows of an activity  
7 they can be asked.

8 *BY MR. BENZION:*

9 Q. If a supervisor knows of an activity he will go to the  
10 faculty member and they will say this activity you engage in,  
11 we think it is reportable, please turn it in?

12 A. Yes.

13 Q. They are telling them what activity they are looking for on  
14 the form, right?

15 A. Correct.

16 Q. Let's get back to this letter on the screen.

17 Dr. Tracy says here that he would be more comfortable  
18 signing if you could just clarify your position on my blog,  
19 right?

20 A. He is asking to have an opinion on the blog, correct.

21 Q. Right. So he can understand how to comply with your  
22 policies, right?

23 A. That is what he is saying.

24 Q. Okay. He is not saying I'm not going to check this check  
25 box, right?

1 A. I don't see anything about the check box in that paragraph.

2 Q. This is his whole email here. Let's look at the whole  
3 email.

4 Nowhere in this email does Dr. Tracy say I am not going to  
5 check that check box, right?

6 A. Correct.

7 Q. So, he has not refused the directive at this point, right?

8 A. In the email, no.

9 Q. Okay. And he hasn't missed a deadline, right? No one gave  
10 him a deadline yet?

11 A. I don't know.

12 Q. You are not aware of whether or not he missed a deadline?

13 A. The deadline is for the assignment, I don't remember what  
14 the deadline was. This is being monitored by OBYT, which is  
15 why the program assistant was trying to get the faculty to  
16 assign to them, set the assignments.

17 Q. Schoenmakers doesn't give him a deadline, right?

18 A. She doesn't.

19 Q. David Williams didn't give him a deadline?

20 A. Correct.

21 Q. There are no deadlines that he missed at this time, right?

22 A. There is no deadline identified in these emails.

23 Q. Okay. So, the instructions or requests from the faculty,  
24 they contain no deadlines at this time, right?

25 A. Correct.

1 Q. Okay. Dr. Tracy, as we established, has not said I am not  
2 going to turn in these forms at this point, right?

3 A. Correct.

4 Q. And he has not said I am not going to check in this check  
5 box at this point, right?

6 A. I don't see that here.

7 Q. Okay. Now, I don't know if we talked about this, but David  
8 Williams is involved in these communications here because it is  
9 his job to be talking about the policies and enforcing the  
10 policies, right?

11 A. Correct.

12 Q. Can we scroll all the way to the top, please.

13 This is one last look at this email, this is James'  
14 response on October 28th to David, to David Williams, correct?

15 A. Correct.

16 Q. And this is about forms and the check box, right?

17 A. And the assignment.

18 Q. The annual assignment with the check box, right?

19 A. Correct.

20 Q. With this Dr. Tracy sent in his annual assignment with the  
21 pdf. This is after he already turned it in, he is now turning  
22 it in again here, right?

23 MS. GRIFFIN: Objection, compound and counsel is  
24 suggesting the answer.

25 MR. BENZION: Let me rephrase.

1 BY MR. BENZION:

2 Q. At the bottom of the email Dr. Tracy is once again turning  
3 in his annual assignment, right?

4 A. I believe he had a hard copy of the assignment he signed,  
5 but he didn't accept it electronically at this point. At least  
6 I would believe that from this statement.

7 Q. You mean he hadn't accepted the revised assignment at this  
8 point, right?

9 A. Well, I don't know. He is saying whatever assignment he  
10 accepted was a hard copy, wasn't electronic.

11 Q. Could we look back at the David Williams email where he  
12 says please look at the revised assignment.

13 He says here, you signed previously --

14 A. I assume, I don't know, but --

15 THE COURT: The witness shouldn't assume or speculate.

16 If the witness doesn't have firsthand knowledge, and  
17 you will be calling a witness who would have firsthand  
18 knowledge, the question would be most appropriate for that  
19 witness.

20 Direct the question to what the witness knows. If you  
21 are not sure, ask whether the witness knows or not. We do not  
22 want speculations or assumptions.

23 MR. BENZION: Yes, your Honor.

24 For the record, I just handed the witness a document  
25 marked as Plaintiff's 33.

1           THE COURT: Okay, that was previously marked for  
2 identification. Is there an agreement at this point?

3           MS. GRIFFIN: No objection.

4           THE COURT: At this point it will be admitted without  
5 objection.

6           *(Whereupon Plaintiff Exhibit 33 was marked for evidence.)*

7           MR. BENZION: May I publish?

8           THE COURT: Yes.

9           BY MR. BENZION:

10          Q. All right. This is an email from David Williams to Dr.  
11 Tracy, correct?

12          A. Correct.

13          Q. Okay. This is sent on November 2nd, correct?

14          A. Correct.

15          Q. Okay. Dr. Williams said, "I sent your pdf to the deans,  
16 but I am not optimistic it will be accepted in lieu of the  
17 assignment on FAIR."

18          Do you agree at the time this was sent, on November 2nd,  
19 2015, that David Williams had not yet told Professor Tracy  
20 whether or not the way Professor Tracy submitted his assignment  
21 would be acceptable?

22          MS. GRIFFIN: Calls for speculation, objection.

23          MR. BENZION: I asked if she agrees this is what was  
24 said to Dr. Tracy in this email.

25          THE COURT: Well, you can read the document, I think

1 the document speaks for itself.

2 Why don't you see if there are any questions -- any  
3 other questions you have.

4 *BY MR. BENZION:*

5 Q. So, there is nothing in the email that tells Dr. Tracy the  
6 way he submits his assignment is going to be unacceptable,  
7 right?

8 A. I don't understand your question.

9 Q. Dr. Tracy, as you just acknowledged, submitted his annual  
10 assignment by pdf in the last email we talked about?

11 A. Yes.

12 Q. And so, here David Williams is telling Dr. Tracy that he  
13 sent that assignment to the deans and he is not sure if it is  
14 going to be acceptable, correct?

15 A. That is what he is saying.

16 Q. Okay. So, if David Williams isn't sure at this point,  
17 neither could Dr. Tracy be. Do you agree with that?

18 A. I don't know.

19 Q. Okay. David Williams doesn't say in this email you must  
20 sign your annual assignment and check the check box in FAIR,  
21 does he?

22 A. He does not say that in this email, correct.

23 Q. He does not give a deadline and say check the check box and  
24 sign in FAIR, does he?

25 A. Not in this email, correct.

1 Q. Let's go back to 31. With respect to the response we just  
2 read from Dr. Tracy to David Williams, there is nothing wrong  
3 with the way Dr. Tracy responded to David Williams here, right?

4 A. No. He is showing his understanding of the policy.

5 Q. That is the way you are reading it; isn't that true?

6 A. I do think he is quoting, making a correction to Dr.  
7 Williams showing that he understands the policy.

8 Q. He is just quoting the policy; isn't that true?

9 A. Correct. He knows where it is.

10 Q. He knows where it is, quoting it, right?

11 A. Yes.

12 Q. All right. So, there is nothing wrong, you would agree,  
13 Plaintiff is justified in responding to Dr. Williams like this?

14 A. Yes.

15 Q. He should have the opportunity to explain himself, correct?

16 A. Absolutely.

17 Q. Let's go to 33. And that was David Williams' response to  
18 that email, and then what happened next, Dr. Alperin? What  
19 happened after this email?

20 A. I don't know.

21 Q. Isn't it true after this email Dr. Tracey was disciplined?

22 A. At some point, I believe it was November 10th.

23 Q. November 10th?

24 A. I don't know that there was anything that happened in  
25 between.



1           MR. BENZION: Can we publish Plaintiff's 35, which is  
2 in evidence?

3           THE COURT: Yes.

4           MR. BENZION: May I approach?

5           THE COURT: Yes.

6 BY MR. BENZION:

7 Q. So, we just saw the November 2nd email from David Williams  
8 and now we have the November 10th Notice of Discipline, right?

9 A. Correct.

10 Q. Okay. Who did Heather Coltman meet with from the employee  
11 relation services team before issuing this Notice of  
12 Discipline?

13 A. I don't know.

14 Q. Do you know what the employee relation services team is?

15 A. Yes, part of Human Resources.

16 Q. What do they do?

17 A. Usually advise on staff issues.

18 Q. Including discipline?

19 A. For staff, yes.

20 Q. Uh-hum.

21 Do you know whether or not Heather Coltman had a meeting  
22 with someone on the employee relation services team?

23 A. I don't know.

24 Q. Weren't you involved in this disciplinary process?

25 A. Yes, but you are asking me if she met with the team, and I

1 don't know.

2 Q. Did you meet with anybody on the employee relation services  
3 team?

4 A. No.

5 MR. CURLEY: No objection.

6 MR. BENZION: May I approach?

7 THE COURT: Yes.

8 MR. BENZION: I am going to show the witness what is  
9 marked Plaintiff's 32-F.

10 THE COURT: That is already in evidence, 32-F.

11 MR. BENZION: Let's publish this, please.

12 THE COURT: Maybe after this we will take a break.

13 BY MR. BENZION:

14 Q. This is an email from David Williams to Dr. Tracy?

15 A. Right.

16 Q. And dated November 9, 2015?

17 A. Yes.

18 Q. David Williams says, "Jim, I received your letter late  
19 Friday afternoon. While I believe your letter both unnecessary  
20 and fundamentally off base, I am sorry I did not update you  
21 mid-week. Your pdf of your assignment was sent to the dean's  
22 office in A&L; they in turn suggested a referral to legal.  
23 Legal referred it to the Provost's office, and I have not heard  
24 back from them. That is the update, David Williams -- DCW.

25 That is David Williams?

1 A. I believe so.

2 Q. At this time, you agree David Williams did not get back to  
3 Dr. Tracy about whether the way he submitted his annual  
4 assignment is acceptable?

5 A. Correct.

6 Q. He didn't say the way you submitted your annual assignment  
7 is not acceptable?

8 A. Correct.

9 Q. He didn't say in this email go by whatever date, check the  
10 check box, right?

11 A. Correct.

12 Q. And then, on the very next day, Dr. Tracy is disciplined?

13 A. Correct.

14 Q. Can you explain that?

15 A. No.

16 Q. As a basis for this discipline is the way that Dr. Tracy  
17 submitted his assignment, not checking the box, right?

18 A. Correct.

19 Q. As of November 9th, no one had gotten back to tell him the  
20 way he submitted it is unacceptable, why was he disciplined for  
21 not submitting it in a certain way?

22 A. He was asked to submit it, and he didn't.

23 Q. He didn't refuse to submit it, we went through all of that,  
24 right?

25 A. As you're presenting it, he didn't refuse to submit it.

1 Documentation from David Williams said he refused.

2 Q. I asked you, when somebody says I am not going to do  
3 something, and we went through all of the emails --

4 MS. GRIFFIN: Objection, argumentative.

5 THE COURT: Sustained.

6 BY MR. BENZION:

7 Q. Prior to the Notice of Discipline being issued to Dr.  
8 Tracy, Dr. Tracy did not say he was not going to do something,  
9 right?

10 A. But he did not do it.

11 Q. My question was, he didn't say he was not going to do it,  
12 right?

13 A. He didn't say it to me, correct. I can't say he didn't say  
14 it to others.

15 Q. He didn't say it in all of the emails, did he?

16 MS. GRIFFIN: Objection, argumentative.

17 THE COURT: Sustained. That ground has been covered.  
18 Any further questions on this document or the area?

19 MR. BENZION: We need to take a break.

20 THE COURT: I want you to complete this area so you  
21 don't go back to it. If you have any other questions in this  
22 line of questioning --

23 MR. BENZION: Sure.

24 MR. BENZION: I want to show the witness Plaintiff's  
25 69 for identification purposes.

1 BY MR. BENZION:

2 Q. This is a disciplinary process overview at Florida Atlantic  
3 University, right?

4 A. Correct.

5 MR. BENZION: At this time I would like to move this  
6 into evidence.

7 THE COURT: Any objection?

8 MR. BENZION: There is no objection on the exhibit  
9 list.

10 MS. GRIFFIN: No objection.

11 THE COURT: Okay, 69 is admitted without objection.

12 (*Whereupon Plaintiff Exhibit 69 was marked for evidence.*)

13 MR. BENZION: Please publish.

14 BY MR. BENZION:

15 Q. The disciplinary process overview. Good communication  
16 between all members of the work team is one of the most  
17 critical aspects of creating and maintaining a positive  
18 productive work environment. A supervisor should ensure that  
19 each employee is aware of the standards and expectations of the  
20 employee's position, as well as the work standards, policies --  
21 there is a url here -- and regulations -- another url -- that  
22 apply to employees in that department and to all of FAU.

23 A continuous flow of open communication between supervisors  
24 and employees is essential to a healthy workplace.

25 THE COURT: Counsel, the documents are on the screen.

1 In the interest of time, is there a question?

2 MR. BENZION: Yes, there is.

3 THE COURT: Okay.

4 BY MR. BENZION:

5 Q. In your opinion, prior to Professor Tracy being disciplined  
6 on November 10th, was he given the understanding and  
7 expectation that the way he submitted his assignment was  
8 unacceptable?

9 A. I don't know.

10 Q. In the emails you just saw, did you see he had been given  
11 such expectation?

12 A. Not in those emails. I don't know what else he was told.

13 Q. Do you think those emails constitute good communication  
14 between the faculty and supervisors?

15 A. Yes.

16 Q. The employee should always be given the opportunity to  
17 explain themselves in action either verbally or in writing.  
18 The employee should be given an opportunity to explain their  
19 actions verbally or in writing. Would you agree that is what  
20 Professor Tracey was doing prior to the discipline?

21 A. Yes.

22 Q. There is nothing wrong with that?

23 A. Correct.

24 Q. None of the implications prior to --

25 A. There isn't any indication he was being disciplined for his

1 behavior.

2 Q. What behavior?

3 A. Not submitting the outside activity forms and the need to  
4 support and acknowledge his assignment. That is what it says.

5 Q. So, asking for clarification before doing something, that  
6 labels you insubordinate at Florida Atlantic University?

7 A. That is not what he was disciplined for at this point.

8 Q. 36, please, the November 22nd letter.

9 Dr. Tracy thought he was being disciplined for just asking  
10 questions for clarification; isn't that true?

11 MS. GRIFFIN: Objection, your Honor.

12 THE COURT: Just a minute. Objection.

13 MS. GRIFFIN: Calls for speculation.

14 THE COURT: It does call for speculation. It is in  
15 the letter, she can't speculate what Dr. Tracy thought.

16 MR. BENZION: I was asking her to confirm what was in  
17 the writing. I understand the Court's ruling. Can we go to  
18 69.

19 THE COURT: You are finishing up this area?

20 MR. BENZION: That is correct, your Honor. We can  
21 take a break now if your Honor prefers.

22 THE COURT: I was trying not to interrupt the flow.  
23 We have been going two hours. Is this a good stopping point?

24 MR. BENZION: Could be, yes.

25 THE COURT: Okay. We will take a break now.

1           So, ladies and gentlemen, we will take our  
2 mid-afternoon break at this point. It is about 3:10, we will  
3 be in recess for 15 minutes, that will bring us to about 3:25.  
4 With the same instructions not to review any media regarding  
5 the case, not to do any research, not to talk about the case  
6 with anyone else and not to have any contact with anyone  
7 associated with the case.

8           We'll see you in 15 minutes.

9           *(Thereupon, the jury leaves the courtroom.)*

10          THE COURT: Okay, I want to remind the witness you  
11 remain under oath, do not discuss your testimony with anyone.

12          It is three hours and nine minutes, you estimated four  
13 hours. How are you looking in terms of remaining time with the  
14 witness, with the goal that direct should be concluded by the  
15 end of today?

16          MR. BENZION: I think I will take up the rest of the  
17 day.

18          THE COURT: So, you are thinking about an hour and a  
19 half, we'll end at five o'clock and conclude the direct.

20          MR. BENZION: Yes, your Honor.

21          THE COURT: Okay, we will be in recess.

22          *(Thereupon, a brief recess was taken.)*

23          THE COURT: All right. Let's bring our jurors in.

24          *(Thereupon, the jury returns to the courtroom.)*

25          THE COURT: Okay, welcome back.



1           The witness on the stand remains under oath, and you  
2 may continue your questioning.

3       *BY MR. BENZION:*

4       *Q.* Dr. Alperin, I want to refer you to this paragraph here.  
5 Right here. (Indicating.)

6           Would you agree in the Notice of Discipline Dr. Tracy is  
7 not told what activity he should put on the outside employment  
8 activity form?

9       *A.* I believe it is not specified here, but I believe it had  
10 been discussed.

11       *Q.* You believe it had been discussed?

12       *A.* Yes.

13       *Q.* Like where?

14       *A.* We discussed it in 2013.

15       *Q.* So, you are saying what he should have on his forms is what  
16 you discussed in 2013?

17       *A.* And anything else that may have been added since then.

18       *Q.* Like those other professors, nobody told Dr. Tracy when he  
19 was disciplined what specific activity should be on the forms,  
20 right?

21       *A.* I don't know. I don't see it here, but I don't know if he  
22 was not told.

23       *Q.* You are here as the corporate representative for the  
24 university?

25       *A.* Yes.

1 Q. And you are here to speak about the discipline?

2 A. Yes.

3 Q. This is a discipline letter?

4 A. Correct.

5 Q. What is the university's knowledge whether or not the  
6 Plaintiff was told specifically what should be on the activity  
7 forms before he was disciplined?

8 A. I don't have any knowledge of that.

9 Q. Is that following the disciplinary process, not telling  
10 the -- Dr. Tracy what should be on the forms that you are  
11 asking for?

12 A. You asked me if I had knowledge of what he was told. I  
13 don't know what he was told.

14 Q. The university doesn't have any knowledge that he was --

15 A. I don't have the knowledge. I see what was in the letter,  
16 what wasn't in the letter. I don't know what he may have been  
17 told.

18 Q. You are here as the corporate representative with the most  
19 knowledge?

20 A. Yes.

21 Q. As a corporate representative of the university you have  
22 the knowledge that the university has, right? That is why you  
23 are here today.

24 A. Okay.

25 Q. You are saying the university does not know whether or not

1 Dr. Tracey was told how to comply with the policies that you  
2 are asking him to comply with?

3 A. I don't know if the dean or director have that acknowledge.

4 Q. Scroll down.

5 You agree the notice of this one was a written reprimand,  
6 right?

7 A. Correct.

8 Q. Okay. If you don't know the answer to that previous  
9 question, then you don't know whether anybody met with Dr.  
10 Tracy before he was disciplined, do you?

11 A. Correct.

12 Q. Isn't somebody required to meet with him before  
13 disciplining him?

14 A. Um-m-m --

15 Q. A supervisor should meet with the employee to discuss  
16 disciplinary action. Isn't somebody supposed to do that?

17 A. That is what it says here.

18 Q. That isn't what happened?

19 A. I don't know.

20 Q. The university doesn't know that either?

21 A. I assume somebody does.

22 Q. Aren't you here for the university?

23 A. I am the corporate rep having to do with policy. I am  
24 telling you I don't know if the director or associate dean or  
25 the dean met with him.

1 Q. That is because it didn't happen, did it?

2 A. I don't know.

3 Q. By the way, you are not just here to testify about the  
4 policy, you are here to testify about discipline as well,  
5 right?

6 A. Correct.

7 Q. Scroll all the way to the top.

8 You already looked at this today, this is the November 22nd  
9 letter, that is the November 10th Notice of Discipline  
10 response?

11 A. Yes.

12 Q. You received this, right?

13 A. I believe at some point, yes.

14 Q. You saw this before Dr. Tracey was threatened with  
15 termination; isn't that true?

16 A. Correct.

17 Q. Okay.

18 MR. BENZION: May I approach the witness?

19 THE COURT: Yes.

20 MR. BENZION: I will be showing the witness 37-W.

21 There is no objection to this document. The Court does not yet  
22 have the redaction of 37-W. This is Plaintiff's 37-W.

23 MS. GRIFFIN: We have no objection.

24 THE COURT: So, 37-W is admitted without objection; is  
25 that right?

1           MS. GRIFFIN: In the form it is shown to the witness,  
2 your Honor.

3           THE COURT: Well, is it my understanding there is a  
4 redacted form of 37-W sought to be admitted and there is no  
5 objection to it?

6           MS. GRIFFIN: Yes, your Honor.

7           THE COURT: Okay.

8           *(Whereupon Plaintiff Exhibit 37-W was marked for evidence.)*

9           MR. BENZION: May I publish?

10          THE COURT: Yes.

11       BY MR. BENZION:

12       Q. Dr. Alperin, this is an email from Heather Coltman to you  
13 on December 1st, right?

14       A. Yes.

15       Q. Dr. Coltman said to you, have you had a chance to look at  
16 J. T.'s response to the Notice of Discipline? He wants a  
17 response by December 1, oh well.

18       Does this represent the highest standards of ethics when  
19 dealing with a faculty member at FAU?

20       A. I don't know what she meant.

21       Q. As Vice Provost and university rep today to talk about  
22 discipline, does this represent the highest standard of ethics  
23 at Florida Atlantic University?

24       A. I think she is following up on his response saying that she  
25 is going to respond.

1 I can't tell you what "oh well" means.

2 Q. I am not asking you what it means. I am asking you, as the  
3 person with the most knowledge of the discipline at the school  
4 and as Diane Alperin, does this email response saying he wanted  
5 a response by December 1, oh well, does that represent the  
6 highest standards of ethics at Florida Atlantic University?

7 A. Not with your intonation, but I don't know what she meant.

8 Q. Is this the type of communication, good communication that  
9 is contemplated by the disciplinary process?

10 A. I can't characterize it that way.

11 Q. You can't characterize it as constructive communication,  
12 either, can you?

13 A. It is to me.

14 Q. Dr. Coltman did not respond to Dr. Tracy's November 22nd  
15 letter on December 1st, did she?

16 A. I don't know.

17 Q. What about as the university?

18 A. I don't know.

19 Q. She didn't respond on the 2nd either?

20 A. I don't know.

21 Q. You didn't respond on the 2nd?

22 A. No, I didn't respond, it wasn't to me.

23 Q. You didn't respond on the 3rd?

24 A. To who?

25 Q. Dr. Tracy.

1 A. No, I didn't.

2 Q. You didn't respond to his November 22nd letter on  
3 December 4th, either, did you?

4 A. I didn't respond.

5 Q. You didn't, right? Okay.

6 A. I believe there was a response, but I did not respond.

7 Q. A response came later, right?

8 A. I don't know when, I don't have the date.

9 Q. You didn't respond to Dr. Tracy's November 22nd request for  
10 clarification on December 5th, did you?

11 A. I don't believe so.

12 Q. You didn't respond on December 6th, did you?

13 A. No.

14 Q. You didn't, did you?

15 A. No. I don't believe so.

16 Q. You didn't respond on December 7th, did you, right?

17 A. No. I don't believe so.

18 Q. And not on the 8th or 9th, did you?

19 MS. GRIFFIN: Objection, this is cumulative, the  
20 witness answered.

21 THE COURT: Okay.

22 MR. BENZION: I will move on.

23 BY MR. BENZION

24 Q. As of December 9th --

25 THE COURT: Hold on a minute.

1 BY MR. BENZION

2 Q. As of December 9th, you had not responded to Dr. Tracy's  
3 November 22nd request for clarification, right?

4 MS. GRIFFIN: Objection, your Honor, this is  
5 cumulative. Dr. Alperin testified it wasn't to her and she did  
6 not respond directly.

7 THE COURT: Sustained.

8 BY MR. BENZION:

9 Q. Something happened on December 10th of importance; isn't  
10 that true, Dr. Alperin?

11 A. What are you referring to?

12 Q. You saw an article published in the newspaper on  
13 December 10th; isn't that true?

14 MS. GRIFFIN: Objection, lack of foundation.

15 MR. BENZION: I am asking her.

16 THE COURT: Overruled. You can answer if you are able  
17 to.

18 MR. BENZION: Let's publish Plaintiff's 61, it is  
19 already in evidence.

20 THE COURT: 61 is in evidence.

21 MR. BENZION: May I approach?

22 THE COURT: Yes.

23 BY MR. BENZION:

24 Q. Dr. Alperin, December 10 you saw this published in the Sun  
25 Sentinel; isn't that true?



1 A. I saw this after it was published, I don't know if it was  
2 on the 10th, but around that time.

3 Q. It was published at 3:15 p.m., December 10th.

4 A. That is what it says.

5 MR. BENZION: Can I approach the witness?

6 THE COURT: Yes.

7 BY MR. BENZION:

8 Q. Showing the witness what is previously marked as  
9 Plaintiff's 39.

10 Dr. Alperin, what is in front of you is an email from  
11 Heather Coltman to you, right?

12 A. Correct.

13 Q. And there is an attachment to the email, correct?

14 A. Correct.

15 Q. And this was sent on December 10th at 4:23 p.m.; is that  
16 right?

17 A. Correct.

18 MR. BENZION: I would like to move this into evidence  
19 as Plaintiff's 39.

20 THE COURT: Any objection?

21 MS. GRIFFIN: No objection.

22 THE COURT: Plaintiff's 39 is admitted without  
23 objection.

24 (Whereupon Plaintiff Exhibit 39 was marked for evidence.)  
25

1 BY MR. BENZION:

2 Q. This is a document entitled Tracy Termination; isn't that  
3 true?

4 A. Correct.

5 Q. This is sent at 4:23 p.m., right?

6 A. Correct.

7 Q. Less than an hour and a half after the publication of that  
8 article I showed you, right?

9 A. Correct.

10 Q. Scroll down.

11 And this document that is attached is a Notice of  
12 Termination letter for Dr. Tracy; isn't that right?

13 A. It is a draft of the letter, yes.

14 Q. You drafted this?

15 A. This was sent to me by Dean Coltman.

16 Q. Dean Coltman is asking you a question in this draft?

17 A. Yes.

18 Q. Right above the question it says, "this disciplinary action  
19 or reprimand is subject to" -- and then this next line is her  
20 question to you, right?

21 A. Correct.

22 Q. It says, "Does this mean a reprimand is the next step  
23 rather than termination?"

24 If she drafted this, why is she asking you that, if there  
25 is a reprimand rather than a termination?

1 A. I don't know.

2 Q. Okay. Scroll down, please.

3 "Therefore, pursuant to Article 16.5 of the collective  
4 bargaining agreement, this constitutes formal notice for  
5 termination for just cause."

6 So, on December 10th, you decided to terminate Professor  
7 Tracy; isn't that true?

8 A. I think after two months of back and forth of outside  
9 employment activity forms and assignments we had begun to  
10 discuss this, yes.

11 Q. And you drafted a letter that would later be the letter  
12 that terminates Professor Tracy?

13 A. There was drafted a letter that was redone that ended up  
14 being a notice, first proposed termination and then  
15 termination.

16 Q. At this point, on December 10, 2015, nobody had yet told  
17 Dr. Tracy that he was facing termination; isn't that true?

18 A. I believe he had a letter of reprimand in November that  
19 says -- somewhere in this stack.

20 Q. Look at the November 10th notice. Is that what you are  
21 referencing?

22 A. Yes. "Also, if you continue to fail to meet your  
23 professional and administrative obligations and respond to  
24 directives from your supervisor, you will face additional  
25 disciplinary action."

1 Q. Not termination?

2 A. Additional discipline.

3 Q. But if there is no threat -- there is no mention of  
4 termination, right?

5 A. I don't see it there, no.

6 Q. It is important that a faculty member should be told they  
7 are facing potential termination before the termination comes,  
8 right?

9 A. Right, and they get that. That is why they propose  
10 termination, and then a letter of termination.

11 Q. There is no letter of termination in the November 10 Notice  
12 of Discipline, and you are drafting a Notice of Termination on  
13 December 10th, before you ever tell him that he is facing  
14 termination; is that true?

15 MS. GRIFFIN: Objection, best evidence rule, there is  
16 an actual Notice of Termination. This is the draft.

17 MR. BENZION: That is not the best evidence rule, I am  
18 asking --

19 THE COURT: Restate your question.

20 BY MR. BENZION:

21 Q. So, now that we looked at the November 10 Notice of  
22 Discipline, you agree on the date this letter is drafted  
23 terminating Professor Tracy he had not yet been threatened with  
24 termination?

25 MS. GRIFFIN: Objection, mischaracterizes the letter.

1           *THE COURT:* I will let the witness answer if she can.  
2   Overruled.

3           *THE WITNESS:* This is not the letter of proposed  
4   termination, this was a draft. We, as I said, we had been  
5   working for two months at the college with him, and we were  
6   moving in this direction.

7   *BY MR. BENZION:*

8   *Q.* When did you call in the employee relation services team to  
9   discuss Dr. Tracy's termination?

10   *A.* I did not.

11   *Q.* Didn't you call them in?

12   *A.* No.

13   *Q.* Aren't you required to do that?

14   *A.* Usually that is for staff, not for faculty.

15   *Q.* Let's pull up Exhibit 69. Scroll down to termination,  
16   please.

17           "Termination is the final and most severe form of  
18   discipline prior to the proposed termination. The supervisor  
19   should meet with a member of the employee's relation services  
20   team to discuss the determination and -- employee's, employee's  
21   it says?

22   *A.* Yes.

23   *Q.* It doesn't say staff?

24   *A.* Yes, but --

25   *Q.* Dr. Tracy is an employee, right?

1 A. Correct.

2 Q. Okay. So, are you saying despite what the document says,  
3 the process laid out in the document doesn't apply to Professor  
4 Tracy?

5 A. Correct. If you go down, it talks about a grievance form  
6 which is a grievance form for staff and other employees, not a  
7 grievance form for faculty.

8 Q. Where does it say that?

9 A. If you click on the grievance form, it is not the grievance  
10 form we use for faculty.

11 Q. Scroll up.

12 There are multiple forms of discipline, right? Right?

13 A. I guess.

14 Q. There is reprimand?

15 A. Yes.

16 Q. That could be oral or written?

17 A. Yes.

18 Q. Methods of discipline, oral reprimand or written reprimand?

19 A. Yes.

20 Q. You could have a suspension?

21 A. Yes.

22 Q. That could be with or without pay?

23 A. Yes.

24 Q. And there is a counseling option, right?

25 A. A counseling option?

1 Q. Yes, counseling, sometimes you can counsel with the  
2 employee and make sure they are complying with the policies,  
3 right?

4 A. Possibly, yes.

5 Q. And termination, most severe form?

6 A. Correct.

7 Q. Isn't it true in December, Heather Coltman did not  
8 recommend termination, she recommended discipline to you,  
9 right?

10 A. I believe she was recommending termination.

11 Q. Isn't it true that Heather Coltman was recommending  
12 discipline in December of 2015? Isn't that true?

13 A. I believe she was recommending termination. I believe this  
14 is a draft of a letter that she sent me.

15 Q. You attended a deposition in this case, Dr. Alperin; is  
16 that true?

17 A. Yes.

18 Q. You attended two depositions, actually. The one I am  
19 referencing is May 9, 2017. You attended that deposition?

20 A. If that is the date, yes.

21 Q. Okay. Mr. Leo was there, right? Do you remember that?

22 A. Oh, I do, yes.

23 Q. And your attorneys were there, too?

24 A. Yes.

25 Q. On that day you took an oath and you swore to tell the

1 truth?

2 A. Yes.

3 Q. The same oath that you took today, right?

4 A. Right.

5 Q. Page 24, lines six through 12.

6 MR. BENZION: May I approach?

7 THE COURT: Yes.

8 THE WITNESS: Okay.

9 BY MR. BENZION:

10 Q. So I will ask you again, Dean Coltman indicated -- did Dean  
11 Coltman recommend termination?

12 A. I said she recommended discipline, termination.

13 Q. That is your testimony. When you were asked, did she  
14 recommend termination, your answer was no?

15 A. Okay, she recommended discipline. My recollection is she  
16 sent me this letter.

17 Q. So, if she recommended discipline, that means that Dr.  
18 Tracy didn't need to be terminated for these alleged offenses,  
19 right?

20 A. Correct.

21 Q. He could have just been disciplined, right?

22 A. Termination is a form of discipline, there are other forms  
23 of discipline.

24 Q. He could have received another form of discipline other  
25 than termination for these alleged violations of policies,



1 right?

2 A. Correct.

3 Q. It didn't have to result in a termination?

4 A. Correct.

5 Q. And you chose for this disciplinary process to end in a  
6 termination, right?

7 A. In consultation with the dean.

8 Q. The answer is yes, you chose that, in consultation with the  
9 dean who said discipline him?

10 A. Yes.

11 Q. Right.

12 MR. BENZION: Can we publish Plaintiff's 34? It is in  
13 evidence.

14 THE COURT: Yes.

15 MR. BENZION: May I approach the witness?

16 THE COURT: Yes.

17 MR. BENZION: Thank you very much.

18 BY MR. BENZION:

19 Q. This is the first time that Dr. Tracy is threatened with  
20 discipline, this December 11th email?

21 A. Well, he already --

22 Q. I am sorry, threatened with termination. I apologize.

23 A. Okay, it does mention that here.

24 Q. This is the first time, in December 2015, he is threatened  
25 with termination?

1 A. Yes.

2 Q. The day after you are preparing the termination letter with  
3 Heather Coltman, right?

4 A. Correct.

5 Q. This is what the letter looks like when you suggest  
6 disciplinary action up to and including termination, right?

7 A. Yes.

8 Q. Again, in this letter or email, there is no mention of the  
9 specific activities that the university is expecting Dr. Tracy  
10 to put on his forms, right?

11 A. Just asking him to fill out the forms.

12 Q. No mention of specific activity like you did with the other  
13 professors, right?

14 A. As far as I know.

15 Q. Okay. And at this time, you knew that he was blogging,  
16 didn't you?

17 A. Yes.

18 Q. Why couldn't you say, put the blog on the form at this  
19 time?

20 A. You have to ask Dean Coltman.

21 Q. Why didn't you tell Dean Coltman to put that on there?

22 A. I suspect we felt he knew what we were talking about.

23 Q. At this time, you are unaware of anybody calling Dr. Tracy  
24 in for a meeting; isn't that true?

25 A. Could you repeat the question?

1 Q. Yes. At this time, nobody called Dr. Tracy in for a  
2 meeting to discuss the specific activities that should be on  
3 the form, right?

4 A. As far as I knew, yes.

5 Q. At this time, you knew about legal research?

6 A. Yes.

7 Q. Nobody, not you, Heather Coltman, David Williams, nobody  
8 called anybody into the office and said why don't you put legal  
9 research on the blog on the form?

10 A. I don't know.

11 Q. The university is not aware of anybody doing that, are  
12 they?

13 A. I don't know if they did or not.

14 Q. Why isn't Dr. Tracy getting the same treatment the other  
15 professors got in 2014 and 2013?

16 A. They failed to report, and when they were asked to, they  
17 did.

18 Q. When they were asked to, they were told specifically what  
19 to put on the forms, weren't they?

20 A. I don't know what they were told specifically.

21 Q. What about the ones you talked to in 2013?

22 A. Which ones are you talking about? Are you talking about --

23 Q. Well --

24 THE COURT: One at a time.

25 THE WITNESS: Each person was different, each person

1 was talked to by their dean. I don't know specifically what  
2 they were told. They may have been told a specific activity,  
3 but I don't know.

4 *BY MR. BENZION:*

5 Q. Do you remember going through all those names and me asking  
6 you if they were told, and you said they were --

7 A. I said they were --

8 *MS. GRIFFIN:* Objection, mischaracterizing her prior  
9 testimony and he needs to give the witness an opportunity to  
10 answer questions.

11 *THE COURT:* Okay, sustained.

12 *BY MR. BENZION:*

13 Q. 85. We went through all these names here. Khi Thai has  
14 indicated he is no longer involved in this project.

15 I asked you and you said you would have had to go to him to  
16 discuss this specific project to know what project we are  
17 talking about here, right?

18 *MS. GRIFFIN:* Objection, he is mischaracterizing the  
19 testimony. She said she talked to other individuals as a  
20 result of the audit.

21 *THE COURT:* Sustained. If you want to ask the  
22 question again, you may ask the witness about her involvement  
23 with respect to these people.

24 *MR. BENZION:* I think the previous testimony is clear,  
25 your Honor, I will move on.

1           *THE COURT:* Okay.

2           *BY MR. BENZION:*

3           *Q.* When you didn't call Professor Tracy into your office on  
4           December 11, 2015, that was a decision you made not to clarify  
5           things for him; isn't that true?

6           *MS. GRIFFIN:* Objection, your Honor, argumentative.

7           *THE COURT:* Overruled. The witness can answer if she  
8           is able to.

9           *THE WITNESS:* I didn't call him into my office, no.

10          *BY MR. BENZION:*

11          *Q.* Was that neglect?

12          *A.* I don't believe so.

13          *Q.* So, you made a conscious decision not to call him in for a  
14          meeting, right?

15          *A.* I sent him a letter and he had a chance to respond and he  
16          could have asked for a meeting.

17          *Q.* Wasn't he asking for clarification all the way up until he  
18          was sent the November 11th email?

19          *A.* And I believe we did clarify things for him.

20          *Q.* Pull up the December 11th email again, please.

21                 So, this email was sent on December 11th, and on  
22                 December 14th, you continued to receive complaints about  
23                 Plaintiff's blogging; isn't that true?

24          *A.* I don't remember what I received on December 14th.

25          *Q.* Are you saying you have no recollection of receiving

1 complaints on December 14th about Professor Tracy's blogging?

2 A. I am not saying I don't remember -- I mean, there were  
3 complaints coming in. What I received on December 14th, I  
4 can't speak about until I see it.

5 Q. If I were to show you a document, might that refresh your  
6 recollection as to what happened on December 14th?

7 A. Maybe.

8 MR. BENZION: May I approach?

9 THE COURT: Yes.

10 BY MR. BENZION:

11 Q. Showing you what is previously marked Plaintiff's 37-B.

12 THE COURT: Okay. It has not officially been marked  
13 on my record. Do you want it marked right now, 37-B?

14 MR. BENZION: Yes, your Honor.

15 THE COURT: You are not seeking to admit it?

16 MR. BENZION: I am not.

17 THE COURT: Okay, we will have it marked for ID.

18 *(Whereupon Plaintiff Exhibit 37-B was marked for*  
19 *identification.)*

20 BY MR. BENZION:

21 Q. Does that document refresh your recollection, Dr. Alperin?

22 A. I don't remember, but it does appear I received it.

23 Q. So then, isn't it true on December 14th, you were receiving  
24 complaints about Plaintiff's blogging?

25 A. Yes.

1 Q. Okay. And on December 16th, you were also receiving  
2 complaints about Plaintiff's blogging; isn't that true?

3 A. I guess. Can you show me something?

4 Q. Do you not remember?

5 A. No.

6 Q. If I were to show you a document, might that refresh your  
7 recollection?

8 A. It might.

9 MR. BENZION: Your Honor, 37-F.

10 THE COURT: You want that marked for identification?

11 MR. BENZION: Please, your Honor.

12 THE COURT: 37-F is marked for identification.

13 (*Whereupon Plaintiff Exhibit 37-F was marked for*  
14 *identification.*)

15 BY MR. BENZION:

16 Q. Does that document refresh your recollection whether or not  
17 you were receiving complaints about the professor's blogging  
18 on --

19 MS. GRIFFIN: Objection, your Honor, the complaints  
20 were about a letter he sent to the Pozner family.

21 THE COURT: Why don't you rephrase your question.

22 BY MR. BENZION:

23 Q. Isn't it true on December 16th, you were receiving  
24 complaints about the Plaintiff, about Dr. Tracy?

25 A. This appears to be a complaint about Dr. Tracy to the dean

1     that she forwarded.

2     Q.   Who is Joshua Glanzer?

3     A.   He works at the university, he is a media relations -- I  
4     don't know his exact title.

5                 MR. BENZION:  Can we publish Exhibit 43, please,  
6     Plaintiff's 43.

7                 THE COURT:  Yes, you may.

8     BY MR. BENZION:

9     Q.   Dr. Alperin, this is the notice of proposed  
10    discipline-termination that you sent Dr. Tracy; isn't that  
11    true?

12    A.   Correct.

13    Q.   Isn't it true that this is the first time that you or  
14    anyone at the university told Dr. Tracy that you wanted his  
15    blog on a reported outside professional activity form?

16    A.   I don't believe so.

17    Q.   Well, you might be referring to January 2013, where you had  
18    a discussion about his blog?

19    A.   Right.

20    Q.   And he said, I am not going to put the blog on the form,  
21    right?

22    A.   Right.

23    Q.   When he said that, by the way, he was not disciplined at  
24    that time, correct?

25    A.   Correct.  He was allowed to continue to blog, 2013, 2014,



1 2015.

2 Q. Nobody said that he was insubordinate for refusing to put  
3 his blog on an outside professional activity form in 2013?

4 A. I was not aware that he had not submitted it in subsequent  
5 years.

6 Q. You were not aware he didn't submit it in 2013?

7 A. When we met him in January 2013, yes.

8 Q. Take this step by step. In the January 2013 letter, the  
9 Plaintiff said I am not going to put my blog on a professional  
10 outside activity form, right?

11 A. Right.

12 Q. After that, in the rest of the year 2013, you did not call  
13 the Plaintiff insubordinate for refusing to put his report on  
14 the outside professional activity form?

15 A. I don't recall doing that.

16 Q. You, in 2014, did not say anywhere that the Plaintiff was  
17 insubordinate for refusing to put his report on the outside  
18 professional activity form?

19 A. I was not involved at that point.

20 Q. You did not put that in the document anywhere?

21 A. Correct. I did not.

22 Q. In 2015, prior to sending this notice of proposed  
23 termination, you did not put in any document that Dr. Tracy was  
24 required to turn in his blog on a reported outside professional  
25 activity form, right?

1 A. I believe it was understood -- yes. I don't believe it is  
2 here.

3 Q. You did not put it on any documents that he should turn in  
4 the form?

5 A. I don't believe so.

6 Q. The first time you told Dr. Tracy that his blog should be  
7 on the outside professional activity form, after he said he was  
8 not going to do that, was two years later, when you proposed to  
9 terminate him two years later, in December 2015?

10 A. Yes.

11 Q. Is that the best way to address this type of matter at  
12 Florida Atlantic University, wait two years?

13 A. If he checked the box, this would have moved forward. I  
14 didn't know he had not submitted the report of professional  
15 outside activity.

16 As I said, there are many employees, this is delegated to  
17 the dean and to the director.

18 Q. So --

19 A. When I became aware of the issue we moved forward.

20 Q. Was this punishment for not checking the box?

21 A. No. This was not listening to your supervisor and  
22 responding to a supervisor's directive.

23 Q. He did respond to the directive, right?

24 A. I have to ask you for clarification, but he didn't respond.  
25 The dean kept extending the deadline expecting him to complete

1 the forms.

2 Q. She sent him a letter on November 10th?

3 A. Correct.

4 Q. And he responded November 22nd?

5 A. Correct.

6 Q. Nobody responded to him until December 11th, threatening  
7 termination?

8 A. Yes, giving him another deadline. He could have submitted  
9 the forms.

10 Q. And he did?

11 A. He wasn't complete.

12 Q. He didn't put the blog on the forms, correct?

13 A. Correct.

14 Q. The blogs that no one told him to put on the forms?

15 A. I think he knew.

16 Q. The blog that no one told him to put on the forms, right?

17 MR. BENZION: She is not answering the question.

18 THE COURT: You asked the question before.

19 BY MR. BENZION:

20 Q. I notice here you say refusal. Dr. Tracy said I am not  
21 going to return the forms, right?

22 A. Yes. You just told me he wrote a letter in 2013, and said  
23 he wasn't going to.

24 Q. Right, 2013. During this dispute in 2015, when he is being  
25 asked to turn in the forms, he never said I am not going to

1 turn in the forms, right?

2 A. I don't know.

3 Q. Does the university know?

4 A. I assume David Williams and Dean Coltman know.

5 Q. Did you look at Dr. Tracy's teacher evaluations before you  
6 proposed terminating him?

7 A. I looked at them in 2013, and I believe you showed them to  
8 me in deposition.

9 Q. Well, that was not exactly my question. That is not what I  
10 was looking for. Let me ask a better question.

11 In 2015, prior to deciding to terminate -- a proposed  
12 termination of a tenured faculty member of Florida Atlantic  
13 University, did you look at the faculty member's teacher  
14 evaluations?

15 A. I had looked at the teacher evaluations, and he was not  
16 terminated for what he was doing in the classroom.

17 Q. Wasn't he accused in this proposed letter of termination of  
18 potentially having a conflict with his commitment to his  
19 teaching responsibilities?

20 MS. GRIFFIN: Objection, improper characterization.

21 THE COURT: Refer directly to the part of the document  
22 you want to question the witness about.

23 BY MR. BENZION:

24 Q. Do you see what I underlined there?

25 A. Uh-hum. It is referring to why there is a need to fill out

1 the form.

2 Q. Right. Okay, so are you saying you are not suggesting he  
3 might have a conflict of time commitment in his activities that  
4 weren't reported?

5 A. What I am saying is, the reason we have the policy is that  
6 we can manage any type of possible conflict.

7 I don't know if there is a conflict without his filling out  
8 the forms.

9 Q. Can't you tell from the teacher evaluations whether or not  
10 he is fulfilling the duties in the classroom?

11 A. Fulfilling your duties in the classroom is one part of the  
12 assignment. We talked last week about teaching, research.

13 Q. Right. You didn't look at the evaluation -- before you  
14 wrote this letter, you did not look at his teacher evaluations,  
15 right?

16 A. I don't recall. It wasn't part of this decision.

17 Q. Isn't it true that you did not look at the evaluations?

18 MS. GRIFFIN: Objection, your Honor, asked and  
19 answered. This is cumulative.

20 BY MR. BENZION:

21 Q. In 2015.

22 THE COURT: The witness may answer the question if you  
23 are able to.

24 THE WITNESS: I don't recall if I did or not.

25

1 BY MR. BENZION:

2 Q. I am going to refer you to the deposition I referred you to  
3 earlier.

4 MS. GRIFFIN: Objection, your Honor, improper  
5 impeachment, she said she didn't recall.

6 THE COURT: Do you want to attempt to refresh her  
7 recollection?

8 BY MR. BENZION:

9 Q. Okay. If I showed you your prior testimony, would that  
10 refresh your recollection whether or not you looked at teacher  
11 evaluations?

12 A. Okay.

13 THE COURT: Indicate page and line.

14 MR. BENZION: Page 26, May 9 deposition, lines 22  
15 through 24.

16 THE COURT: While the witness is looking, it is about  
17 4:24, we are on target to finish at 5:00?

18 MR. BENZION: We started 15 minutes later.

19 THE COURT: No. We are finishing at 5:00. Jurors  
20 are not feeling well.

21 THE WITNESS: I say here we did not look at -- you are  
22 asking me about his evaluations in general, and I said I didn't  
23 look at his evaluation and I looked at SPOT.

24 BY MR. BENZION:

25 Q. What is that?

1 A. Student perception of teaching.

2 Q. Right, and you didn't find any issues there, did you?

3 A. No.

4 Q. No students complaining about his teaching?

5 A. He had have favorable SPOTs. You showed me comments that  
6 some students were surprised by the content, but I just thought  
7 he made them think.

8 Q. And you already know that he had outstanding evaluations as  
9 a teacher, right?

10 A. Excuse me?

11 Q. You know that Professor Tracy was evaluated as an  
12 outstanding professor?

13 A. Yes.

14 Q. Outstanding professor, no complaint from the students, and  
15 the appropriate way you thought to handle him was to terminate  
16 him?

17 A. This had to do with insubordination.

18 MR. BENZION: A copy of Plaintiff's Exhibit 26, you  
19 have that, counsel.

20 May I show the witness a copy of Plaintiff's 26?

21 BY MR. BENZION:

22 Q. Before we talk about this email, Dr. Alperin, I want to ask  
23 you, is writing a book or contributing to a book reportable  
24 outside activity?

25 A. Depending on the book.

1 Q. What does it depend on?

2 A. Part of your assignment, outside of the discipline, that  
3 would be outside activity.

4 Q. Writing something outside your discipline is an outside  
5 activity?

6 A. If we had a faculty member in engineering who was writing a  
7 play, it may not be part of his assignment, but it might be  
8 part of his outside activity.

9 Q. An engineer writing a play?

10 A. Yes, we actually have an engineer who was an actor years  
11 ago.

12 Q. Is that a professional activity?

13 A. Yes.

14 Q. Even though it doesn't relate to the engineer's profession?

15 A. Yes, it is an activity we need to be aware of.

16 Q. That is a reportable activity or outside activity?

17 A. It is a reportable activity.

18 Q. When is a book not outside activity?

19 A. If you write a book for your child, that is meant for your  
20 child, that would be personal activity.

21 Q. What if you spend a lot of time writing that book?

22 A. Still personal activity.

23 Q. What if a faculty member writes a book for a child and the  
24 book is hundreds of pages long; couldn't that impose a time  
25 commitment?



1 A. It may.

2 Q. In that situation, it may be reportable?

3 A. I don't know, maybe.

4 Q. It depends on a lot whether or not a book is reportable,  
5 right?

6 A. I think we are asking for -- yes.

7 Q. That email that is in front of you, that is an email chain  
8 between you and Dean Ilyas, right?

9 A. Correct.

10 Q. The reason why you are communicating the things in the  
11 email is because it is within your employment to communicate  
12 about such matters?

13 A. Right.

14 MR. BENZION: I would like to move Plaintiff's 26 into  
15 evidence.

16 MS. GRIFFIN: This is one of the exhibits to our prior  
17 discussion.

18 THE COURT: The standing objection?

19 MS. GRIFFIN: Yes.

20 THE COURT: Overruled, and it will come in over  
21 objection.

22 MR. BENZION: May we publish, your Honor?

23 THE COURT: Yes.

24 (Whereupon Plaintiff Exhibit 26 was marked for evidence.)  
25

1 BY MR. BENZION:

2 Q. This is you responding to Dean Ilyas in February 2016, and  
3 you thank him for the followup and you say "see my responses  
4 below"?

5 A. Yes.

6 Q. Below is Dean Ilyas' prior email to you and all the things  
7 here is your interlineating responses to Dean Ilyas' questions,  
8 right?

9 A. I guess, there is a piece missing, but yes.

10 Q. How many pages do you have in your hand?

11 A. I have three pages.

12 Q. I see three pages.

13 A. I have at the top Mohammad is thanking him for his  
14 followup. I understand.

15 Q. What you are saying is, he sent you an email and you  
16 responded and the questions are in the original email?

17 A. Yes.

18 Q. Let's look at the first question he asks you.

19 A. Right.

20 Q. Let's look at the second question. One faculty member has  
21 served on a NSF panel and was paid an honorarium. This may  
22 also be considered as a part of the professional service, but  
23 is compensated. Should this be reported as an outside  
24 activity?

25 No. This would be professional service and would need to

1 be reported.

2 A. Would not be --

3 Q. Would not need to be reported?

4 A. Correct.

5 Q. The dean is asking you the question because he doesn't know  
6 the answer to it, right?

7 MS. GRIFFIN: Objection, calls for speculation.

8 THE COURT: Sustained.

9 BY MR. BENZION:

10 Q. What is professional service?

11 A. In an assignment, you have service as a component of your  
12 assignment and you are assigned to the department, college,  
13 university or to your profession.

14 Q. And where is that?

15 A. That is part of FAIR, Faculty Assignment Information  
16 Report.

17 Q. Are you saying it is defined in there?

18 A. I believe we have a list of professional service, and  
19 professional service -- many disciplines have professional  
20 organizations, and that NSF panel is something positive for  
21 faculty members to do and they do it as part of the service  
22 assignment.

23 Q. Where is compensated activity defined?

24 A. I believe in the guidelines we talked about compensated and  
25 uncompensated activity.

1 Q. You don't actually define it in the guidelines, though, do  
2 you?

3 A. I don't recall. Being paid an honorarium is a  
4 compensation.

5 Q. But it is not reportable?

6 A. Excuse me?

7 Q. You said being paid an honorarium is compensation and it is  
8 not reported?

9 A. I am saying it is part of an assignment.

10 Q. Sometimes compensation is not reported?

11 A. If it is part of your assignment.

12 Q. The third question: One faculty member is writing a book.  
13 Should this be reported as an outside activity?

14 Your answer: No, this would be reported as part of  
15 research/creative activity.

16 You didn't say it depends, did you?

17 A. I didn't. I believe I met with Dean Ilyas before this  
18 email, but I believe the book was part of a faculty member's  
19 assignment.

20 Q. You didn't say that here?

21 A. Correct.

22 Q. You didn't say it depends if you are writing the book as  
23 part of your research assignment or part of outside  
24 professional activity, right?

25 A. I didn't say that.

1 Q. No. Look at the fourth question. Dean Ilyas is dean of a  
2 college?

3 A. Yes.

4 Q. In charge of a number of faculty members, right?

5 A. Yes.

6 Q. In charge of enforcing the policy to his faculty members?

7 A. Yes.

8 Q. "A general question is what activities need to be reported  
9 and what do not need to be reported?"

10 As you know -- this is your answer?

11 A. Correct.

12 Q. "As you know, we have been working on a new outside  
13 employment/professional activity form for some time. I hope to  
14 have it finalized by the end of the month. At the time it is  
15 distributed the Provost will send additional instructions as to  
16 what is to be included and what is not. The University of  
17 Florida has quite a detailed document that I am reviewing."

18 After Dr. Tracey was fired the faculty got additional  
19 instructions on what should be included on the form and what  
20 should not; isn't that true?

21 A. The initiative for -- the obligation to report never  
22 changed. The additions to the form, the corrections to the  
23 form started with the email you showed me from Dr. Schoenmakers  
24 in 2014, and the changes for the form all had to do with new  
25 Federal regulations and primarily with new Federal regulations

1 in regard to grants.

2 Q. The obligation to report never changed, right?

3 A. You always have an obligation to report. That has been  
4 there for a very long time.

5 Q. So, here we are -- what month in 2016 is this? Can we  
6 scroll?

7 February 2016, this is one month after the Plaintiff is  
8 terminated?

9 A. Yes.

10 Q. A month after the Plaintiff is terminated, there are  
11 questions about what needs to be reported and what doesn't,  
12 right?

13 A. Correct.

14 MR. BENZION: I would like to show the witness what is  
15 marked Plaintiff's 14.

16 THE COURT: Okay.

17 MS. GRIFFIN: Your Honor, this was not on the list we  
18 were previously provided by Plaintiff's counsel as a potential  
19 exhibit. We also have a standing objection to this one.

20 THE COURT: Is this part of the standing objection?

21 MS. GRIFFIN: Yes.

22 THE COURT: All right. Are you seeking to have it  
23 admitted? Is the Plaintiff seeking to have it admitted?

24 MR. BENZION: Yes, your Honor.

25 THE COURT: 14 will be admitted over objection.

1           (Whereupon Plaintiff Exhibit 14 was marked for evidence.)

2       BY MR. BENZION:

3       Q.   This document is Florida Atlantic University report of the  
4       outside activity form, additional explanations, right?

5       A.   Right.

6       Q.   And the additional explanations on how to comply with the  
7       conflict of interest/outside activities policy, right?

8       A.   Right.

9       Q.   And this is a document that Dr. Tracey was never given the  
10      benefit of seeing before he was terminated; isn't that true?

11      A.   Correct.

12      Q.   It came after he was fired, right?

13      A.   Yes.

14      Q.   It was being drafted while he was employed at the  
15      university?

16      A.   Yes, focused on the division of research.

17      Q.   Let's talk about income, okay?

18           There are some forms of income that you can earn as a  
19      faculty member that are not reportable; isn't that true?

20      A.   I don't know.

21      Q.   What about gambling?

22      A.   I guess that is a professional activity -- I mean personal  
23      activity, you are saying?

24      Q.   Uh-hum.

25      A.   Okay, yes.

1 Q. Gambling is a personal activity?

2 A. As far as I know, unless the professor taught gambling. We  
3 don't have gambling at FAU.

4 Q. Okay, wait a second. So, if a professor gambles, that  
5 can't be a possible reported activity?

6 A. I don't know, I never had anybody submit anything like  
7 that. If it is a personal activity that they are going to Hard  
8 Rock, I wouldn't expect that to be reported, correct.

9 Q. Why not?

10 A. Because it is not tied to their profession.

11 Q. But you said an engineer who writes a play would have to  
12 report that?

13 A. Yes.

14 Q. How does that relate to the --

15 A. It is a time commitment.

16 Q. Can't you go to the casino and play poker all night and be  
17 a time commitment?

18 A. I guess so --

19 MS. GRIFFIN: If counsel could allow her to finish.

20 BY MR. BENZION:

21 Q. You were saying gambling now could be a reportable  
22 activity?

23 A. I don't perceive it right now as a reportable activity.

24 Q. When you say that you don't see that as a reportable  
25 activity, that is an interpretation of the policy you are



1 making, right?

2 A. Yes.

3 Q. In order to comply with the policy or understand the  
4 policy, you have to interpret it, right?

5 A. Yes.

6 Q. There is no policy at FAU specifically addressing blogging,  
7 right?

8 A. Correct. We don't -- we were talking about an activity,  
9 not media.

10 Q. No specific policy addressing blogging, social media or  
11 posting, anything like that?

12 A. Correct.

13 Q. So, when you determined that Dr. Tracy's blog was a  
14 reportable activity, you made an interpretation of the  
15 agreement, right?

16 A. Yes.

17 Q. Isn't it possible to have a different interpretation of the  
18 agreement?

19 A. Yes, but I believe it was an activity that tied to his  
20 profession.

21 Q. So, when Dr. Tracy interpreted blogging differently than  
22 you did, he was insubordinate?

23 A. Yes.

24 Q. So, if somebody disagrees with Diane Alperin, they are  
25 insubordinate?

1 A. He had the opportunity to respond to the notice.

2 Q. He did respond to the notice, didn't he?

3 A. No, he never responded to the notice of proposed  
4 termination.

5 Q. That is not what I am talking about, Doctor.

6 MR. BENZION: I will show the witness what is  
7 previously marked as Plaintiff's 5.

8 May I approach?

9 THE COURT: Yes.

10 BY MR. BENZION:

11 Q. Can you take a look at the documents I placed in front of  
12 you, Dr. Alperin?

13 A. Yes.

14 Q. You recognize these documents, right?

15 A. No. I have never seen these before.

16 Q. You weren't shown these documents in your deposition?

17 A. I don't remember the first page at all.

18 Q. Look at the rest of the pages, please.

19 A. This is doctor --

20 MS. GRIFFIN: This is not in evidence, I ask the  
21 witness not read from the documents. We will have objections.

22 THE COURT: That should be taken down.

23 MR. BENZION: It is not being published.

24 THE COURT: Yes, that is 14 that is up. We are  
25 talking about 5 now.

1           MR. BENZION: Correct, your Honor.

2           THE COURT: Nothing should be up on the screen.

3           What is the pending question about 5 to the witness?

4           MR. BENZION: I asked her to look at them and I asked  
5 her if she recognized any of the documents as the ones she  
6 looked at during her deposition.

7           MS. GRIFFIN: Your Honor, we will have objections to  
8 authenticity and hearsay for this.

9           MR. BENZION: I am not moving them into evidence at  
10 this time.

11          THE COURT: Okay, so it is just being marked.

12          MR. BENZION: ID only, marked as Plaintiff's 5, your  
13 Honor.

14          *(Whereupon Plaintiff Exhibit 5 was marked for*  
15 *identification.)*

16          THE COURT: You have 15 minutes left.

17          BY MR. BENZION:

18          Q. Dr. Alperin, isn't it true you were asked to look for  
19 outside employment/professional activity forms for these  
20 faculty members at the university? Isn't that true?

21          A. I remember that I did receive a request from, I believe, a  
22 Ms. Hollingsworth, who is a public records person, for a list  
23 of people, to look for their outside employment forms and I  
24 looked for them in the credential files that I hold. Whether  
25 they were these people, I don't recall, but you have the email,

1 I'm sure.

2 Q. Okay. So, are you saying you don't know whether or not  
3 Chris Robe has turned in a request for employment/personal  
4 activity form for --

5 MS. GRIFFIN: Objection, the witness said she didn't  
6 refer to the document.

7 THE COURT: The question is whether or not this  
8 professor turned in a request for employment/personal activity  
9 form.

10 MS. GRIFFIN: And she previously indicated she wasn't  
11 sure if it was these particular faculty members.

12 MR. BENZION: She can answer that question.

13 THE COURT: The witness may answer.

14 THE WITNESS: I don't know.

15 BY MR. BENZION:

16 Q. You don't know whether Chris Robe --

17 THE COURT: She said she doesn't know.

18 BY MR. BENZION:

19 Q. Is it true you don't know if David Williams submitted  
20 employment activity forms for his social media activity?

21 A. I don't know.

22 Q. Isn't it true you don't know if Heather Coltman submitted  
23 forms for her social media activity online?

24 A. I don't know.

25 Q. So, is it your testimony that you don't remember looking at

1     these forms in your deposition?

2     A.   I remember one or two of them, I don't remember all of  
3     them.   I am not saying you didn't show me, but I don't remember  
4     them.

5     Q.   If I showed you your deposition transcript, might it  
6     refresh your recollection?

7     A.   Sure.

8             MR. BENZION:   May I approach?

9             THE COURT:   Yes.

10            MS. GRIFFIN:   Objection, your Honor.   We need to  
11     discuss the relevance of what it was she was asked at her  
12     deposition, the hearsay involved in that.

13            THE COURT:   The only pending question is refreshing  
14     the witness' recollection whether she was shown what is in  
15     Exhibit 5 at a deposition.   I will allow her to look to --

16            MR. BENZION:   Page 182, Volume 2 of the 7/28  
17     deposition.

18            THE COURT:   There is no testimony about the content of  
19     Exhibit 5, it is not in evidence.

20            MR. BENZION:   Right.   Lines 15 through 25.

21            MR. FEICHT:   What page, counsel?

22            MR. BENZION:   182.

23            THE WITNESS:   So the question to me --

24     BY MR. BENZION:

25     Q.   No, you just need to read that.

1 A. Okay.

2 Q. To 184, 18. Thank you.

3 MS. GRIFFIN: Your Honor, this is the same document  
4 that is referenced in what they just showed the witness.

5 THE COURT: Okay. Well, I tell you what, at this  
6 point I understand one of our jurors may need to use the  
7 restroom. We are close to five o'clock and I know a few of our  
8 jurors are not feeling well.

9 What we are going to do is break for the day.

10 Take the document back from our witness, and I remind  
11 our witness you remain under oath and do not discuss your  
12 testimony with anyone. You will be back on the stand tomorrow.

13 At this point I will excuse everyone.

14 Certainly bring anything you need tomorrow as far as  
15 drinks and cough lozenges. I am sorry people aren't feeling  
16 well, that is an uncomfortable feeling. Bring whatever you  
17 need to make yourself comfortable. We might split up the  
18 seating so everybody feels they have the space they need.

19 With that, this couldn't be a day you leave without an  
20 important instruction, don't review any media, don't do any  
21 research about the case, don't discuss the case with each other  
22 or anyone else, don't have any contact with anyone connected  
23 with the case. Feel well, have a nice evening, and we will see  
24 you tomorrow morning at 9:00 a.m.

25 *(Thereupon, the jury leaves the courtroom.)*

1           *THE COURT:* You can be seated.

2           Okay, let's see here. Okay.

3           So, I am going to have Plaintiff's counsel review your  
4 notes, I will give you 15 minutes in the morning for direct and  
5 I will cut you off. That will make it four and a half hours.  
6 So, that is giving you some leeway going over what you  
7 estimated in the trial plan, and there is going to be cross and  
8 maybe cross/direct. I am hard pressed to feel you will be left  
9 in a position where you will not have all of your questions  
10 asked, we need to bring direct to a reasonable closure.

11           Is that acceptable to the Plaintiff?

12           *MR. BENZION:* That is, your Honor.

13           *THE COURT:* We will start at 9:00 and have 15 minutes  
14 of direct and go into cross/direct.

15           The witness may step down.

16           What issues do we need to address? We have Dr.  
17 Alperin and after that Dr. Coltman.

18           So, is there anything we need to discuss?

19           *MR. BENZION:* Yes, your Honor, we would like to let  
20 the Court know we can release Mohammed Ilyas and David  
21 Williams.

22           *THE COURT:* All right. Anyone else?

23           *MR. BENZION:* We are going to release or excuse  
24 Professor DeRosa.

25           *THE COURT:* Okay.

1           MR. BENZION: We are contemplating some additional  
2 potential excuses, not ready to do that yet.

3           The expected lineup is Heather Coltman --

4           THE COURT: Just a moment. We will call that one,  
5 Tracey was one, Alperin two, Coltman three. What is the next  
6 one?

7           MR. BENZION: Dr. Glanzer, Jeffrey Morton, and Lisa  
8 Metcalf.

9           THE COURT: Six, is that correct?

10          MR. BENZION: Yes, and all the others may not be  
11 called.

12          THE COURT: Dr. Kajiura has been called.

13          MR. BENZION: Yes, there is still a possibility --

14          MR. LEO: So we are clear, there is an objection to  
15 this evidence of other blogging activities, so we cannot excuse  
16 other faculty members who were blogging at the time. We are  
17 working with opposing counsel to alleviate the need. This has  
18 been addressed with respect to the evidence so that we can't  
19 release any of the professors, but we would like to if the  
20 evidence can come in through other witnesses, perhaps.

21          THE COURT: All right. Keep working on it.

22          So, Defense, will you be in a position to communicate  
23 to the three that they don't have to be on standby?

24          MR. CURLEY: As to Mr. Williams, in light of their  
25 decision not to call him, we may call him.



1           *THE COURT:* Okay. As far as communicating that he is  
2 not going to be called by the Plaintiff.

3           *MS. GRIFFIN:* Yes, your Honor, we'll communicate with  
4 those witnesses.

5           *THE COURT:* All right. So, what else?

6           Was there something about the current document that  
7 needed to be addressed that was before the witness?

8           *MR. BENZION:* We will try to would that out tonight  
9 and clear up what that confusion was.

10          *THE COURT:* Okay.

11          *MR. CURLEY:* A couple of housekeeping matters. One,  
12 can we make sure we have a copy for Defense counsel of all of  
13 the exhibits and that we get it when they are presenting it to  
14 the witness?

15          *THE COURT:* Yes, both sides should do that.

16          *MR. CURLEY:* Okay. Thank you, your Honor.

17          Secondly, several exhibits went in today that were not  
18 disclosed in advance. Given your Honor's rulings, which we are  
19 trying to comply with, I would like to make sure that it works  
20 both ways.

21          *THE COURT:* Any exhibits -- can you go through a  
22 preview of exhibits, we only have 15 minutes with Dr. Alperin,  
23 any additional exhibits with Dr. Alperin and exhibits with Dr.  
24 Coltman?

25          *MR. BENZION:* All of the exhibits have already been

1 put in with Dr. Alperin.

2 THE COURT: They are in evidence?

3 MR. BENZION: Yes.

4 THE COURT: On cross?

5 MS. GRIFFIN: We will make that disclosure this  
6 evening, your Honor.

7 THE COURT: And the same with Coltman, have you  
8 exchanged the Coltman exhibits? It seems likely Coltman will  
9 be called tomorrow.

10 MR. BENZION: Yes, your Honor.

11 THE COURT: So, do that this evening.

12 MR. BENZION: Yes.

13 THE COURT: Okay, all right. Why don't we plan to  
14 meet at 8:45 to get settled in before the jurors return at nine  
15 o'clock.

16 All right. We will be in recess until tomorrow.

17 MR. CURLEY: Thank you, your Honor, have a good  
18 evening.

19 THE COURT: Have a good evening, everyone.

20 (Thereupon, the Court was recessed.)

21 \* \* \*

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25

1 I certify that the foregoing is a correct transcript  
2 from the record of proceedings in the above matter.

3  
4 Date: December 28, 2017

5 /s/ Pauline A. Stipes, Official Federal Reporter

6 Signature of Court Reporter  
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Pauline A. Stipes, Official Federal Reporter

<p><b>MR. BENZION: [172]</b> 5/2 5/10  5/14 5/16 6/17 7/5 9/13  11/14 28/17 29/20 29/24 51/2  53/17 53/22 55/2 55/9 55/22  56/1 56/14 56/23 57/4 57/8  57/11 57/18 57/20 58/15  58/18 58/23 72/14 73/10  73/15 73/17 73/19 77/4 80/3  80/8 80/11 80/16 81/2 81/4  86/23 87/12 87/24 88/13 94/9  94/20 95/21 99/23 99/25  103/10 103/13 103/15 103/19  104/7 104/19 104/21 105/24  106/3 106/13 106/16 106/21  106/24 107/5 107/10 107/16  108/5 108/11 112/3 112/19  114/9 114/13 114/15 120/2  123/12 126/7 126/11 126/14  130/23 132/18 132/20 133/8  133/13 133/15 133/19 139/14  142/9 144/11 145/10 145/12  151/1 151/3 151/23 152/3  155/11 157/3 157/5 157/8  161/23 162/3 164/24 165/22  166/6 166/22 168/25 169/3  170/5 170/7 170/10 172/18  172/22 172/23 173/4 173/7  173/12 174/1 175/15 175/19  175/23 176/15 176/19 180/17  180/19 181/8 183/21 184/14  184/17 184/20 185/4 185/17  188/16 192/5 193/11 193/14  193/16 196/23 198/7 198/13  198/15 199/8 199/10 200/4  203/16 206/13 206/17 207/17  209/13 209/21 214/13 214/23  218/5 218/22 218/25 219/3  219/8 219/11 220/11 221/7  221/15 221/19 221/21 223/11  223/18 223/22 223/25 224/6  224/9 224/12 225/7 225/24  226/2 226/9 226/11  <b>MR. 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GRIFFIN: [87]</b> 8/15 8/18  9/1 50/23 52/2 57/13 57/19  61/17 72/9 72/23 74/23 75/25  76/14 76/23 80/6 85/13 86/11  86/19 86/25 87/16 94/12  95/13 96/1 97/7 100/16 101/3  101/10 102/4 102/14 103/4  104/12 106/19 106/22 111/2  112/15 117/16 123/11 126/9  131/1 133/10 140/6 143/12  149/1 151/25 155/7 155/18  157/7 159/13 161/15 164/22  166/2 166/21 172/3 172/15  173/9 175/10 175/12 180/22  180/25 181/5 183/18 184/3  184/13 185/20 188/14 188/24  196/7 196/17 197/5 199/18  204/19 205/17 206/3 209/15  209/18 211/6 214/16 214/20  216/18 218/19 219/6 220/4  220/9 221/9 222/2 225/2  226/4  <b>THE COURT: [349]</b>  <b>THE WITNESS: [33]</b> 16/20  26/25 27/13 27/17 33/16  33/20 35/23 41/5 42/24 43/5  43/13 43/15 45/8 45/17 45/25  47/14 51/6 73/4 76/17 83/4  111/4 127/19 149/5 155/22  162/5 189/2 192/7 195/24  197/8 205/23 206/20 220/13  221/22  <b>\$</b>  <b>\$50 [1]</b> 14/24  <b>'</b>  <b>'12 [1]</b> 23/2  <b>/</b>  <b>/s [1]</b> 227/5  <b>1</b>  <b>1/14 [1]</b> 106/14  <b>10 [4]</b> 184/24 187/16 188/11  188/21  <b>10,000 [2]</b> 13/7 13/10  <b>100 [2]</b> 1/22 139/18  <b>1019113.pdf [1]</b> 134/1  <b>10:25 [1]</b> 50/11  <b>10th [16]</b> 15/14 15/25 168/22  168/23 169/8 174/6 180/9  184/9 184/13 185/2 185/3  185/15 187/6 187/20 188/13  203/2  <b>11 [2]</b> 3/4 197/4  <b>11/30 [2]</b> 131/4 144/15  <b>111 [1]</b> 8/8  <b>111-B [1]</b> 73/14  <b>112 [3]</b> 3/12 73/15 73/21  <b>114 [1]</b> 8/9  <b>11:00 [1]</b> 50/12</p>	<p><b>11:34 [1]</b> 49/13  <b>11:40 [1]</b> 49/14  <b>11th [5]</b> 193/20 197/18  197/20 197/21 203/6  <b>12 [1]</b> 192/5  <b>12/1/17 [3]</b> 9/25 10/7 10/18  <b>12:03 [1]</b> 155/24  <b>13 [7]</b> 37/24 39/25 39/25  39/25 40/12 62/24 134/12  <b>13-page [1]</b> 37/21  <b>133 [1]</b> 3/11  <b>14 [19]</b> 3/17 23/2 62/20  62/25 65/9 89/15 89/23 90/2  92/9 106/14 110/8 110/11  112/7 113/9 113/23 214/15  214/25 215/1 218/24  <b>14th [12]</b> 90/7 106/18 110/22  111/1 111/19 113/13 197/22  197/24 198/1 198/3 198/6  198/23  <b>15 [13]</b> 50/16 62/20 62/25  65/9 80/17 176/3 176/8  206/18 219/16 221/20 223/4  223/13 225/22  <b>152 [1]</b> 3/13  <b>157 [2]</b> 3/13 8/9  <b>16 [3]</b> 90/18 90/24 92/23  <b>16-CV-80655-ROSENBERG [1]</b>  1/2  <b>16.5 [1]</b> 187/3  <b>165 [5]</b> 8/9 9/9 10/3 10/4  10/6  <b>166 [1]</b> 3/14  <b>16th [2]</b> 199/1 199/23  <b>17 [3]</b> 9/25 10/7 10/18  <b>18 [18]</b> 43/17 81/19 82/2  84/3 84/5 84/12 84/14 84/25  85/20 85/25 88/4 90/22 93/17  93/18 142/10 142/10 145/3  222/2  <b>181 [1]</b> 3/15  <b>182 [2]</b> 221/16 221/22  <b>184 [1]</b> 222/2  <b>185 [1]</b> 3/15  <b>18th [9]</b> 82/15 82/23 82/25  83/8 83/9 83/13 87/24 88/8  90/8  <b>19 [9]</b> 35/4 46/4 46/9 47/5  47/24 81/5 81/7 130/4 130/6  <b>19.2 [1]</b> 35/6  <b>19.7 [1]</b> 124/18  <b>198 [1]</b> 3/16  <b>1980 [1]</b> 2/5  <b>199 [1]</b> 3/16  <b>1:15 [3]</b> 97/17 97/22 108/4  <b>1st [7]</b> 17/18 17/25 18/5  33/8 116/17 181/13 182/15  <b>2</b>  <b>2.6 [2]</b> 57/3 57/17  <b>20 [2]</b> 50/12 107/5  <b>2010 [1]</b> 47/21  <b>2012 [7]</b> 12/11 12/17 62/24  78/16 78/16 78/18 81/14  <b>2013 [98]</b> 12/11 14/7 31/12  31/17 31/19 32/6 33/25 39/18  42/18 43/17 52/24 53/2 59/4  59/9 60/1 62/20 62/24 63/1</p>
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